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Council Proceedings

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Forty-third Session, 1934

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GOVERNMENT OF BENGAL.

GOVERNOR OF BENGAL.

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2. Excise.

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DEPUTY PRESIDENT.

MR. RAZAUR RAHMAN KHAN, B.L.

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3. Khan Bahadur MUHAMMAD ABDUL MOMIN.
4. Mr. NARENDRA KUMAR BASU.

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Assistant Secretary to the Council—Mr. K. ALI AFZAL, Bar.-at-Law.

BENGAL LEGISLATIVE COUNCIL.

ALPHABETICAL LIST OF MEMBERS.

A

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur. [Dacca City (Muhammadan).]
Ali, Mr. Altaf. [Bogra (Muhammadan).]
Ali, Maulvi Hassan. [Dinajpur (Muhammadan).]
Ali, Maulvi Syed Nausher. [Jessore South (Muhammadan).]
Armstrong, Mr. W. L. [Presidency and Burdwan (European).]
Ashworth, Mr. C. G. [Presidency and Burdwan (European).]

B

Baksh, Maulvi Shaikh Rahim. [Hooghly *cum* Howrah Municipal (Muhammadan).]
Baksh, Maulvi Syed Majid. [Jessore North (Muhammadan).]
Bal, Babu Lalit Kumar. [Bakarganj South (Non-Muhammadan).]
Bal, Rai Sahib Sarat Chandra. [Faridpur South (Non-Muhammadan).]
Ballabh, Rai Bahadur Debendra Nath. [24-Parganas Rural North (Non-Muhammadan).]
Banarji, Rai Bahadur Sailendra Nath. (Expert, Nominated.)
Banerji, Rai Bahadur Keshab Chandra. [Dacca Rural (Non-Muhammadan).]
Banerji, Mr. P. [24-Parganas Rural South (Non-Muhammadan).]
Bannerjee, Babu Jitendralal. [Birbhum (Non-Muhammadan).]
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Bose, Mr. S. M., Bar.-at-Law. [Calcutta East (Non-Muhammadan).]
Bottomley, Mr. J. M. (Nominated Official.)
Burn, Mr. H. H. (Bengal Chamber of Commerce.)

C

Chatterjee, Mr. B. C., Bar.-at-Law. [Bakarganj North (Non-Muhammadan).]
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman. [Faridpur North (Muhammadan).]

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*Oath taken on the 31st January, 1934.

Chaudhuri, Khan Bahadur Maulvi Hafizur Rahman. (Nominated Non-official.)
Chaudhuri, Dr. Jogendra Chandra. [Bogra *cum* Pabna (Non-Muhammadan).]
Chaudhuri, Babu Kishori Mohan. [Rajshahi (Non-Muhammadan).]
Chaudhuri, Maulvi Syed Osman Haider. [Tippera North Muhammadan).]
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Chowdhury, Haji Badi Ahmed. [Chittagong South (Muhammadan).]
Choudhury, Maulvi Nural Absar. [Chittagong North (Muhammadan).]
Cohen, Mr. D. J. (Nominated Non-official.)

D

Dain, Mr. G. R., C.I.E. (Bengal Chamber of Commerce.)
Das, Rai Bahadur Kamini Kumar, M.B.E. [Chittagong (Non-Muhammadan).]
Das, Rai Bahadur Satyendra Kumar. [Dacca City (Non-Muhammadan).]
Dutt, Mr. G. S. (Nominated Official.)
Dutt, Rai Bahadur Dr. Haridhan. [Calcutta Central (Non-Muhammadan).]

E

Edgley, Mr. N. G. A. (Nominated Official.)
Eusufji, Maulvi Nur Rahman Khan. [Mymensingh South-West (Muhammadan).]

F

Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur. [Minister.] [Tippera South (Muhammadan).]
Fawcus, Mr. L. R. (Nominated Official.)
Faslullah, Maulvi Muhammad. [Noakhali West (Muhammadan).]
Ferguson, Mr. R. H. [Rajshahi (European).]

G

Ghose, Dr. Amulya Ratan. [Howrah Municipal (Non-Muhammadan).]
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Gladding, D. (Nominated Official.)
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*Guha, Babu Profulla Kumar. [24-Parganas Municipal North (Non-Muhammadan).]
Guha, Mr. P. N. (Nominated Non-official.)
*Gupta, Mr. J. N., C.I.E., M.B.E. [Bankura West (Non-Muhammadan).]
Gupta, Rai Bahadur Mahendra Nath. (Expert, Nominated.)

H

Hakim, Maulvi Abdul. [Mymensingh Central (Muhammadan).]
Haque, Khan Bahadur Maulvi Azizul. [Nadia (Muhammadan).]
Hogg, Mr. G. P., C.I.E. (Nominated Official.)
Hooper, Mr. G. G. (Nominated Official.)
Hoque, Kazi Emdadul. [Rangpur East (Muhammadan).]
Hosain, Nawab Musharruf, Khan Bahadur. [Malda *cum* Jalpaiguri (Muhammadan).]
Hossain, Maulvi Muhammad. [Bakarganj North (Muhammadan).]
Huq, Mr. A. K. Fazl-ul. [Bakarganj West (Muhammadan).]
Hussain, Maulvi Latafat. (Nominated Non-official.)

K

Karim, Maulvi Abdul. [Burdwan Division South (Muhammadan).]
Kasem, Maulvi Abul. [Burdwan Division North (Muhammadan).]
Khan, Khan Bahadur Maulvi Muazzam Ali. [Pabna (Muhammadan).]
*Khan, Mr. Razaur Rahman, B.L. [Dacca East Rural (Muhammadan).]
Khan, Maulvi Tamizuddin. [Faridpur South (Muhammadan).]
Kindersley, Mr. J. B. (Expert, Nominated.)

L

Law, Mr. Surendra Nath. (Bengal National Chamber of Commerce.)
Lockhart, Mr. A. R. E. [Presidency and Burdwan (European).]

M

Maguire, Mr. L. T. (Anglo-Indian.)
Maiti, Mr. R. [Midnapore South (Non-Muhammadan).]

Deputy President, Bengal Legislative Council.

Martin, Mr. O. M. (Nominated Official.)
Mason, Mr. G. A. (Indian Jute Mills Association.)
McCluskie, Mr. E. T. (Anglo-Indian.)
Miller, Mr. C. C. (Bengal Chamber of Commerce.)
Mitter, the Hon'ble Sir Provash Chunder, K.C.S.I., C.I.E. (Member, Executive Council.)
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Mittra, Babu Sarat Chandra. [24-Parganas Rural Central (Non-Muhammadan).]
Momin, Khan Bahadur Muhammad Abdul. [Noakhali East (Muhammadan).]
Mookerjee, Mr. Syamaprosad, Bar.-at-Law. (Calcutta University.)
Mukherji, Rai Bahadur Satish Chandra. [Hooghly Rural (Non-Muhammadan).]
Mukhopadhaya, Rai Sahib Sarat Chandra. [Midnapore South-East (Non-Muhammadan).]
Mullick, Mr. Mukunda Behary. (Nominated Non-official.)

N

Nag, Reverend B. A. (Nominated Non-official.)
Nag, Babu Suk Lal. [Khulna (Non-Muhammadan).]
Nandy, Maharaja Sris Chandra, of Kasimbadar. (Bengal National Chamber of Commerce.)
Nazimuddin, the Hon'ble Mr. Khwaja, C.I.E. [Minister.] [Bakarganj South (Muhammadan).]
Nicholl, Mr. C. K. (Indian Tea Association.)
Norton, Mr. H. R. (Calcutta Trades Association.)

P

Paul, Sir Hari Sanker, KT. [Calcutta South (Non-Muhammadan).]
Poddar, Mr. Ananda Mohan. (Bengal Mahajan Sabha.)
Poddar, Seth Hunuman Prosad. [Calcutta West (Non-Muhammadan).]

Q

Quasem, Maulvi Abul. [Khulna (Mnhammadan).]

R

Raheem, Mr. A., C.I.E. [Calcutta North (Muhammadan).]
Rahman, Mr. A. F. [Rangpur West (Muhammadan).]
Rahman, Mr. A. F. M. Abdur-. [24-Parganas Rural (Muhammadan).]
Rahman, Maulvi Azizur. [Mymensingh North-West (Muhammadan).]
Raikat, Mr. Prosanna Deb. [Jalpaiguri (Non-Muhammadan).]
Rai Mahasai, Munindra Deb. [Hooghly Municipal (Non-Muhammadan).]
Ray, Babu Amulyadhan. [Jessore South (Non-Muhammadan).]
Ray, Babu Khetter Mohan. [Tippera (Non-Muhammadan).]
Ray, Babu Nagendra Narayan, B.L. [Rangpur East (Non-Muhammadan).]
Ray, Mr. Shanti Shekhareswar, M.A. [Malda (Non-Muhammadan).]
Ray, Kumar Shib Shekhareswar. (Rajshahi Landholders.)
*Ray Chaudhuri, the Hon'ble Raja Sir Manmatha Nath, KT., of Santosh. (Dacca Landholders.)
Ray Chowdhury, Mr. K. C. (Nominated Non-official.)
Ray Chowdhury, Babu Satish Chandra. [Mymensingh East (Non-Muhammadan).]
Reid, the Hon'ble Mr. R. N., C.S.I., C.I.E. (Member, Executive Council.)
Ross, Mr. J. B. (Indian Mining Association.)
Rout, Babu Hoseni. [Midnapore North (Non-Muhammadan).]
Roy, the Hon'ble Sir Bijoy Prasad Singh, KT. [Minister.] [Burdwan South (Non-Muhammadan).]
Roy, Babu Harihansa. [Howrah Rural (Non-Muhammadan).]
Roy, Babu Jitendra Nath. [Jessore North (Non-Muhammadan).]
Roy, Mr. Saileswar Singh. [Burdwan North (Non-Muhammadan).]
Roy, Mr. Sarat Kumar. (Presidency Landholders.)
Roy, Mr. S. N., C.I.E. (Nominated Official.)
Roy Choudhuri, Babu Hem Chandra. [Noakhali (Non-Muhammadan).]

S

Saadatullah, Maulvi Muhammad. [24-Parganas Municipal (Muhammadan).]
Sahana, Babu Satya Kinkar. [Bankura East (Non-Muhammadan).]
Samad, Maulvi Abdus. [Murshidabad (Muhammadan).]
Sarker, Rai Bahadur Rebati Mohan. (Nominated Non-official.)
Sen, Rai Sahib Akshoy Kumar. [Faridpur North (Non-Muhammadan).]

*President of the Bengal Legislative Council.

Sen, Mr. B. R. (Nominated Official.)
Sen, Rai Bahadur Jogesh Chandra. [24-Parganas Municipal South (Non-Muhammadan).]
Sen Gupta, Dr. Naresh Chandra. [Mymensingh West (Non-Muhammadan).]
Shah, Maulvi Abdul Hamid. [Mymensingh East (Muhammadan).]
Singh, Srijut Taj Bahadur. [Murshidabad (Non-Muhammadan).]
Singha, Mr. Arun Chandra. (Chittagong Landholders.)
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur. (Burdwan Landholders.)
Sircar, Dr. Sir Nilratan, KT., M.D. [Calcutta South (Non-Muhammadan).]
Solaiman, Maulvi Muhammad. [Barrackpore Municipal (Muhammadan).]
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T

Thompson, Mr. W. H. (Bengal Chamber of Commerce.)
Townend, Mr. H. P. V. (Nominated Official.)

W

Walker, Mr. W. A. M. (Indian Jute Mills Association.)
Wilkinson, Mr. H. R., C.I.E. (Nominated Official.)
*Williams, Mr. A. deC., I.C.S. (Nominated Official.)
Woodhead, the Hon'ble Mr. J. A., C.I.E. (Member, Executive Council.)

*Oath taken on the 14th February, 1934.

THE BENGAL LEGISLATIVE COUNCIL PROCEEDINGS

(Official Report of the 43rd Session.)

Volume XLIII—No. 4.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Monday, the 19th February, 1934, at 3 p.m.

Present:

MR. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 96 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Demolition of a mosque at Bishaikhali in the Jessore district.

***63. Maulvi SYED MAJID BAKSH:** (*a*) Is the Hon'ble Member in charge of the Revenue Department aware—

(*i*) that in September last the High Court of Calcutta in the second appeal of Srish Chandra Ganguly *versus* Esom Musalli has ordered the demolition of a mosque at Bishaikhali in the district of Jessore;

(*ii*) that the said decree has been granted on the ground of misuse of the tenant of his holding for building a mosque on a very small area?

(*b*) Have the Government considered—

(*i*) that the enforcement of such a decision is likely to cause a breach of the peace and communal trouble; and

(iii) that the decision of the High Court is likely to prove a source of further litigation of like nature in future in many places in Bengal and thereby become a fruitful source of danger to the public peace and communal trouble in the province?

(c) If the answer to (a) is in the affirmative, are the Government considering the desirability of undertaking legislation to amend the Bengal Tenancy Act to prevent forfeiture of tenancy on the above ground?

MEMBER in charge of REVENUE DEPARTMENT (the Hon'ble Sir Charu Chunder Ghose): (a) (i) and (ii) Yes.

(b) (i) and (ii) There is always a danger of communal trouble arising out of cases of this description, but in the present instance it is understood that negotiations are going on for an amicable settlement. and have very nearly succeeded.

(c) No.

Maulvi ABDUL KARIM: Will the Hon'ble Member be pleased to state whether, if the negotiations failed, Government propose to take any action in the matter?

The Hon'ble Sir CHARU CHUNDER GHOSE: The question does not arise at the moment, but no doubt the point of view indicated by the hon'ble member will receive consideration.

Khan Bahadur Maulvi AZIZUL HAQUE: In view of the fact that Government do not propose to undertake any legislation to amend the Bengal Tenancy Act, are they prepared to undertake to amend the Land Acquisition Act in order to make it possible for Muhammadans to acquire lands by paying full value?

The Hon'ble Sir CHARU CHUNDER GHOSE: The question will be examined when it arises.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to state for how long these negotiations have been going on?

The Hon'ble Sir CHARU CHUNDER GHOSE: The answer to that is: for a considerable period.

Mr. SHANTI SHEKHARESWAR RAY: Is the Hon'ble Member in a position to give an idea as to how long the negotiations are going to end?

The Hon'ble Sir CHARU CHUNDER GHOSE: The answer is in the negative.

Maulvi TAMIZUDDIN KHAN: Will the Hon'ble Member be pleased to state the reasons why Government do not intend to take steps for amending the Bengal Tenancy Act?

The Hon'ble Sir CHARU CHUNDER GHOSE: I must ask for notice of that question.

Corruption amongst process-servers and ministerial officers of civil courts.

*84. **Maulvi MUHAMMAD FAZLULLAH:** (*a*) Is the Hon'ble Member in charge of the Judicial Department aware—

(*i*) that in some districts, *e.g.*, Noakhali, Tippera, the District Judges have taken special measures to put a stop to corruption amongst process-servers and ministerial officers of civil courts; and

(*ii*) that their efforts have been successful to some extent?

(*b*) Are the Government considering the desirability of moving the Hon'ble High Court for the issue of instructions to the District Judges to take measures similar to those adopted by the District Judges of Noakhali and Tippera and of taking other suitable steps in the matter?

(*c*) Is the Hon'ble Member also aware—

(*i*) that there is also corruption amongst the peons and the ministerial officers of the criminal and the revenue courts of the province; and

(*ii*) that this is a source of hardship to the public?

(*d*) Do the Government contemplate taking any step to purify the courts of the evil and to redress the grievances of the litigant public?

(*e*) Do the Government contemplate appointing a small committee of the official and non-official members of the Council to devise ways and means to put a stop to these corruptions?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*)(*i*) and (*ii*) As regards Noakhali the hon'ble member is referred to the answer given to question No. 43 (starred) at the last session of the Council.

As regards Tippera the District Judge is carrying out successfully the instructions recently issued by the High Court for the administration of the Copying Department.

(*b*) The High Court have already issued the requisite instructions.

(*c*) and (*d*) Government have no evidence of widespread corruption such as is suggested in the question.

(*e*) Does not arise.

Mr. NARENDRA KUMAR BASU: In view of the volley of questions regarding process-servers, will it not be more economical to abolish process-servers altogether?

The Hon'ble Mr. R. N. REID: It would be economical no doubt, but the interests of the process-servers have to be considered also.

Babu HEM CHANDRA ROY CHOUDHURI: With reference to (*c*) and (*d*), in view of the fact that Government are in possession of some evidence about the existence of corruption, do they intend to inquire about the nature and extent of it?

The Hon'ble Mr. R. N. REID: I do not think I gave any answer to the effect that Government were in possession of facts as regards some corruption.

Dinajpur railway station platform.

*85. **Maulvi HASSAN ALI:** (*a*) Is the Hon'ble Member in charge of the Public Works (Railways) Department aware that the Dinajpur railway station platform is an unmetalled one?

(*b*) If the answer to (*a*) is in the affirmative, what are the reasons?

(*c*) Is the Hon'ble Member aware that bare-footed passengers suffer on account of stone-rubbishes spread over the said platform?

MEMBER in charge of PUBLIC WORKS (RAILWAYS) DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*a*) No. The Railway authorities have informed this Government that the Dinajpur station platform is metalled, but not paved or cemented.

(*b*) Does not arise.

(*c*) Government have no information that this is the case.

Dinajpur railway station.

*66. **Maulvi HASSAN ALI:** (a) Is the Hon'ble Member in charge of the Public Works (Railways) Department aware that there is only one single gate in the Dinajpur railway station for passing of both male and female passengers?

(b) If the answer to (a) is in the affirmative, are the Government considering the desirability of urging the Railway authorities to construct a special gate for female passengers? If not, why not?

The Hon'ble Mr. J. A. WOODHEAD: (a) Yes.

(b) No. It is not the practice on the Eastern Bengal Railway to provide a separate exit for female passengers, which would, *inter alia*, necessitate the employment of an additional ticket collector, and Government are not prepared to urge the Railway administration to make an exception in the case of Dinajpur station.

Thermal treatment of cholera.

*67. **Maulvi HASSAN ALI:** (a) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state whether it is a fact that one Dr. N. K. Chakravarty of Thermo Medical Laboratory at Dinajpur, petitioned the Hon'ble Minister for accepting his scheme for thermal treatment of cholera in the province by registered letter No. G. 17, dated the 14th November, 1932 (registered No. 179), and that reminders also were sent by letters G. 18 and G. 19, dated 2nd January, 1933, and 21st March, 1933, respectively?

(b) If the answer to (a) is in the affirmative, will the Hon'ble Minister be pleased to state whether any reply was given to the petitioner? If not, why not?

MINISTER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (a) and (b) There is no trace of any such petitions having been received.

Ministerial officers of the Narail Civil Court, Jessore.

*68. **Mr. P. BANERJI:** (a) Is the Hon'ble Member in charge of the Judicial Department aware that Maulvi Syed Jalaluddin Hashemy, an ex-M.L.C., delivered a speech in the Budget session of the Bengal Council in 1930 and serious allegations were made thereby against the Narail Civil Court ministerial officers in the district of Jessore?

(b) Is it a fact—

(i) that a memorial, dated the 7th July, 1933, was sent to the Government by Babu Pulin Behari Kuri of Bagdanga, Narail police-station, through the District Judge, Jessore, complaining seriously against the Narail ministerial staff;

(ii) that Babu Jatindra Nath Poddar of Bagdanga, Narail police-station, Jessore, sent to the Government a memorial, dated the 27th November, 1933, through the District Judge of Jessore, making serious allegations against the Narail ministerial officers;

(iii) that the inhabitants of the villages of Narail police-station sent to the Government, through the District Judge of Jessore, a memorial, dated the 16th December, 1933, complaining against the ministerial officers of Narail in the district of Jessore; and

(iv) that the villagers of Narail police-station sent to the Government, through the Munsif, Narail, Jessore, a memorial, dated the 6th December, 1933, making serious allegations against the ministerial officers of Narail Civil Court.

(c) If the answers to (b) are in the affirmative, will the Hon'ble Member be pleased to state what were the contents of the said memorials?

(d) If the answers to (a) and (b) are in the affirmative, will the Hon'ble Member be pleased to state what action, if any, Government took or intend to take in these matters?

(e) If no action has been or is intended to be taken, what are the reasons?

The Hon'ble Mr. R. N. REID: (a) Yes.

(b) and (c) No memorials containing general complaints against the ministerial staff of Narail were received but there were three petitions making allegations against a particular clerk. These on inquiry were found to be false and malicious.

(d) and (e) Do not arise.

Light-posts at the Dinajpur railway station.

*89. **Maulvi HASSAN ALI:** (a) Is the Hon'ble Member in charge of the Public Works (Railways) Department aware that the present light-posts at the Dinajpur railway station are too small in height to light the spaces opposite the train?

(b) Is it also a fact that some higher light-posts have been constructed in the station but these are not being used?

(c) If the answer to (b) is in the affirmative, what are the reasons for non-use of these high light-posts for lighting purposes?

The Hon'ble Mr. J. A. WOODHEAD: (*a*) and (*b*) Five high power lamps on 25 feet standards have recently been installed and are now in use.

(*c*) Does not arise.

Dinajpur railway station platform.

*70. **Maulvi HASSAN ALI:** (*a*) Is the Hon'ble Member in charge of the Public Works (Railways) Department aware—

(*i*) that the Dinajpur railway station has got only one platform;

(*ii*) that it is a junction for two lines, *e.g.*, Katihar and Ruhea; and

(*iii*) that passengers suffer under inconveniences owing to inbings of different trains in the same platform?

(*b*) Is it a fact that there are only three lines of railways in the station itself?

(*c*) If the answer to (*b*) is in the affirmative, what is the distance between them?

(*d*) Are the Government considering the desirability of urging upon the Railway authorities for the construction of a second raised platform for Ruhea trains in the third line?

(*e*) If the answer to (*d*) is in the negative, what are the reasons?

The Hon'ble Mr. J. A. WOODHEAD: (*a*) (*i*) Dinajpur railway station has one main platform and a small "dock" or bay platform.

(*ii*) Yes.

(*iii*) Yes, but there is unfortunately no room for the construction of another platform unless the whole station yard is remodelled.

(*b*) There are three running lines and two goods loops at the station.

(*c*) The distance between these lines, from centre to centre of track, is as follows:—

Between 1 and 2—15 feet.

Between 2 and 3—14 feet.

Between 3 and 4—13 feet 6 inches.

Between 4 and 5—12 feet 3 inches.

(*d*) Not at present.

(*e*) The construction of another platform for the Ruhea trains would entail the remodelling of the Dinajpur station yard which would be unduly expensive, having regard to present financial conditions.

East Indian Railway Workers' Union.

*71. **Dr. NARESH CHANDRA SEN GUPTA:** (a) Will the Hon'ble Member in charge of the Police Department be pleased to state on how many occasions orders under section 144, Criminal Procedure Code, have been made against the workers of the East Indian Railway Workers' Union since it was registered?

(b) Is it not a fact—

(i) that on each of these occasions the workers were required by the order to leave Lillooah where they were living and

(ii) that on the last of these occasions the proceedings against Dines Chandra Roy had to be dropped on the ground that the order was wholly illegal?

(c) Will the Hon'ble Member be pleased to state what precise acts involving a likelihood of a breach of the peace was alleged or proved on each occasion when the order under section 144, Criminal Procedure Code, was passed?

(d) Is it a fact that on each of these occasions the order was passed at the instance of the East Indian Railway authorities?

MEMBER in charge of POLICE DEPARTMENT (the Hon'ble Mr. R. N. Reid): (a) Such orders were issued on three occasions on the Assistant General Secretary and the Joint Secretary of the Union.

(b) (i) Yes. Their homes are in the Burdwan district.

(ii) The injunction issued on 10th November, 1933, was withdrawn as it was found defective and a fresh injunction was served on him on 2nd December, 1933.

(c) The persons in question attempted, by speech and writing, to encourage unrest and disorder among the employees in the East Indian Railway Workshops.

(d) No.

Dr. NARESH CHANDRA SEN GUPTA: Is it not a fact that at the time of the issue of the order they were living at Lillooah?

The Hon'ble Mr. R. N. REID: I think at the time they were staying at Lillooah.

Dr. NARESH CHANDRA SEN GUPTA: Is it not a fact that the order in question directed them to leave Lillooah?

The Hon'ble Mr. R. N. REID: Yes.

Dr. NARESH CHANDRA SEN GUPTA: Is there any provision in the Criminal Procedure Code for any such order under section 144?

The Hon'ble Mr. R. N. REID: No, Sir; I am not aware of that.

Beggars in Calcutta.

*72. **SETH HUNUMAN PROSAD PODDAR:** (*a*) Has the attention of the Hon'ble Minister in charge of the Local Self-Government Department been drawn to the remarkable increase, during recent years, in the number of beggars to be found in the public streets and places of Calcutta?

(*b*) Is the Hon'ble Minister aware that, of late, the beggar nuisance has become a public scandal and that no part of the city, not excluding such a locality as the Chowringhee Square, is immune from it?

(*c*) Is the Hon'ble Minister further aware that in many of the cases, the beggars are sufferers from infectious and ugly diseases which they display to elicit public sympathy much to the disgust of all?

(*d*) Has the attention of the Government been drawn to the fact that most of the beggars hail from other provinces such as Madras, Orissa and the United Provinces and that Calcutta serves as the chief centre for their unwelcome activities?

(*e*) Will the Hon'ble Minister be pleased to state, what steps, if any, have been taken by the Government to restrict, in a manner considered feasible, the influx of beggars from outside or what other necessary measures have been adopted to free the city from this nuisance?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) There are no statistics to show whether there has been an increase.

(*b*) Begging is prevalent throughout the city, though especially in the northern part of it. The police take action on complaint when the conduct of the beggars constitutes a public nuisance.

(*c*) The display of open sores is not unusual; it is impossible to say how far beggars suffer from infectious diseases. Government cannot say whether or not the display of sores excites general disgust rather than public sympathy.

(*d*) Government have no information.

(*e*) Government have no power to prevent the influx of beggars into Calcutta. The only measure adopted is prosecution of beggars who have become a public nuisance.

Maulvi ABDUL KARIM: Do the Government propose to take statistics in order to ascertain the figures?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: It is not yet contemplated to take any statistics.

Rai Bahadur Dr. HARIDHAN DUTT: Is it not a fact that a pretty large number of figures are brought before the northern and southern ports by the police?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes.

Rai Bahadur Dr. HARIDHAN DUTT: Is it not a fact that they are only warned and discharged by the Magistrate, there being no place to send them to?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, it is a fact.

Rai Bahadur Dr. HARIDHAN DUTT: Is it not a fact that the Refuge can only give accommodation to 5 or 7 persons at the most and that there is no other accommodation available in Calcutta?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Probably so.

Babu HEM CHANDRA ROY CHOUDHURI: What do the Government intend to do to meet the situation?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government have to wait till the financial situation improves. I do not think the responsibility lies on the Government alone, but it also rests with the Calcutta Corporation to a very large extent.

Rai Bahadur Dr. HARIDHAN DUTT: Is it not a fact that a large percentage of these beggars are so diseased that no humane Magistrate can send them for any punishment?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government have no statistics to say that a large percentage of the beggars are diseased.

Khan Bahadur Maulvi AZIZUL HAQUE: Will the Hon'ble Minister clarify the position by stating whether the Calcutta beggars are to be dealt with at the cost of *mufassal* finance?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: The finance of the province is the general finance, and I do not know of any Calcutta finance or *mufassal* finance of Government.

Sirajganj-Jagannathganj route.

***73. Babu SATISH CHANDRA RAY CHOWDHURY:** (*a*) Is the Hon'ble Member in charge of the Public Works (Railways) Department aware—

(*i*) of the inconvenience of the passengers travelling by Eastern Bengal Railway from Dacca and Mymensingh *via* Bahadurabad and Santahar to Calcutta owing to the paucity of third class carriages in the Darjeeling mail train to which passengers are transhipped at Santahar;

(*ii*) of the inattention of the station staff at Santahar shown in the matter of helping the third class passengers in finding accommodation in the Darjeeling mail; and

(*iii*) that the third class carriages in the Darjeeling mail leaving Sealdah are often packed by passengers travelling below 200 miles against the rules, to the inconvenience of passengers travelling through to Mymensingh or to Dacca *via* Santahar for want of proper accommodation?

(*b*) Is the Hon'ble Member also aware that the absence of proper shed at Santahar is causing hardships to third class passengers who have to wait there for transhipment at midnight?

(*c*) If the answers to (*a*) and (*b*) are in the affirmative—

(*i*) what steps do the Government propose taking to remove these inconveniences; and

(*ii*) what steps are being taken to open the Jagannathganj-Sirajganj route for passengers from Mymensingh to Calcutta?

The Hon'ble Mr. J. A. WOODHEAD: (*a*) (*i*) Owing to the closing of the Sirajganj-Jagannathganj route on account of river difficulties at Sirajganj, a service has been arranged *via* Bahadurabad in connection with 1-Up and 2-Down Darjeeling mail trains.

No over-crowding has been reported since this service has been introduced.

(*ii*) No. All possible assistance is rendered by the station staff to passengers of all classes.

(*iii*) The carriages of the Darjeeling mails are checked before the train leaves Calcutta and the passengers travelling less than the authorised distance are not allowed to travel by these trains.

(*b*) Third class waiting accommodation is provided at Santahar on both up and down platforms.

(*c*) (*i*) Does not arise.

(*ii*) The survey of a line to a possible new site for the ghat at Sirajganj has been undertaken but it is not expected that it will be possible to reopen this route before April next.

Babu SATISH CHANDRA RAY CHOWDHURY: In regard to (*a*)(*ii*), have any inquiries been made by any responsible official? If so, by whom?

The Hon'ble Mr. J. A. WOODHEAD: For these matters we rely on information supplied by the Railway authorities.

Babu SATISH CHANDRA RAY CHOWDHURY: With reference to (*b*), is not a fact that on the down platform there is no waiting accommodation?

The Hon'ble Mr. J. A. WOODHEAD: I am afraid I do not know.

Babu SATISH CHANDRA RAY CHOWDHURY: With reference to (*b*) (*iii*), is the Hon'ble Member in a position to assure that the line *viâ* Serajganj will be soon finished by April, 1934.

The Hon'ble Mr. J. A. WOODHEAD: I can add nothing to what appears in the reply I have already given.

Proceeds of motor vehicles tax allotted to Satkhira municipality.

*74. **Maulvi ABUL QUASEM:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state—

(*i*) the area, population and relative importance of the Satkhira and Debhata municipalities in the district of Khulna;

(*ii*) the length of metalled and unmetalled roads maintained by each municipality;

(*iii*) the amount actually spent by each municipality during each of the last three years;

(*iv*) the number of motor vehicles which plied for hire within the area of each municipality during each of the last three years;

(*v*) the amount of motor vehicles tax realized on account of such vehicles during each of the said three years;

(*vi*) what is the amount of the proceeds of the motor vehicles tax allotted to each municipality during the current year;

(*vii*) why is the amount larger in the case of Debhata municipality; and

(*viii*) what are the reasons for the differential treatment in the matter of the allotment?

(*b*) Are the Government considering the desirability of making a generous allotment to the Satkhira municipality in the coming year?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) (*i*) to (*vi*) A statement is laid on the table.

(*vii*) and (*viii*) Owing to a printing mistake the amount to be granted to Debhata was wrongly calculated.

(*b*) No.

Statement referred to in the reply to clause (a) (i) to (vi) of starred question No. 74.

	Satkhira.	Debhata.
Area in square miles	9	5
Population	11,241	4,954
Relative importance	Headquarters of subdivision.	..
Length of roads in 1932 (in mileage)—		
(*i*) Metalled	13	2·8
(*ii*) Unmetalled	23	17·3
Amount spent on roads—		
1930-31	2,875	495
1931-32	3,070	254
1932-33	3,119	752
Number of motor vehicles plying for hire in—		
1930-31	16	..
1931-32	26	..
1932-33	38	..
Amount of motor vehicles taxes realised—		
1932-33	2,051	75
Amount of grant from motor vehicles tax fund	270	619

Maulvi ABUL QUASEM: In view of the fact that Satkhira is the subdivision headquarters and Debhata is a small place within the subdivision, how, owing to some printing mistake, the Satkhira municipality was deprived of its due share of the Road Board Fund?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Satkhira got its due and proper share but Debhata got more than its due share. It was due to a printing mistake.

Maulvi ABUL QUASEM: How such a serious mistake came to be committed, necessitating the deprivation of the grant to the Satkhira municipality?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: It is not a fact that the Satkhira municipality got what it should have got, but Debhata got what it should not have got. It was really due to a printing mistake.

Babu JITENDRALAL BANNERJEE: Are the figures printed now correct?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Probably they are correct. These figures have not been checked by us. They have been printed by the Council Department.

Babu JITENDRALAL BANNERJEE: My question is with reference to the figures in the last line?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, they are correct.

Mr. NARENDRA KUMAR BASU: Whether the amount has been paid to the Debhata Municipality?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes.

Mr. NARENDRA KUMAR BASU: And the mistake was not discovered till the payment had been made?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, it was not discovered till the question was put

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Shab-i-Barat holiday at Jessore.

31. Maulvi SYED MAJID BAKSH: (*a*) Is the Hon'ble Member in charge of the Finance Department aware—

(*i*) that there is a Shab-i-Barat holiday at Khulna; and

(*ii*) that there is no Shab-i-Barat holiday at Jessore?

(*b*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of directing the authorities to grant a Shab-i-Barat holiday at Jessore?

(*c*) Has the Hon'ble Member made arrangement for granting an extra holiday for Iduzzuha and one holiday for Akhiri Chahar Somba?

MEMBER in charge of FINANCE DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*a*) (*i*) and (*ii*) Yes.

(*b*) and (*c*) The Hon'ble Member is referred to Finance Department Resolution No. 702 Mis., dated the 2nd February, 1934, a copy of which has been placed on the library table.

Victoria College, Comilla.

32. Babu KHETTER MOHAN RAY: (*a*) Is the Hon'ble Minister in charge of the Education Department aware that—

(*i*) some of the terms of the Trust Deed of the Victoria College, Comilla, relating to the constitution of the governing body are at variance with the regulations framed by the Calcutta University;

(*ii*) that on account of this difficulty, the governing body of the said College could not be constituted in accordance with the regulations of the University; and

(*iii*) that the Syndicate of the University urged upon the authorities of the College and the Government that the said Trust Deed should be so amended as to conform to the University regulations by introducing a short Bill in the local Legislative Council?

(*b*) If the answer to (*a*) (*iii*) is in the affirmative, do the Government intend introducing a Bill in the next session to amend the same?

(*c*) Is the Hon'ble Minister aware that the Syndicate has threatened to withdraw the affiliation of the College unless the governing body is constituted in the near future in accordance with the regulations framed by them?

MINISTER in charge of EDUCATION DEPARTMENT (the Hon'ble Mr. Khwaja Nazimuddin: (*a*) (*i*) and (*ii*) Yes.

(*iii*) Yes: the University have addressed the Director of Public Instruction, Bengal, on the subject. The governing body has also asked the University to have a Bill introduced through the member who represents the University in the Council.

(*b*) The matter is under consideration.

(*c*) Yes.

Babu KHETTER MOHAN RAY: With reference to (*b*), has any draft been prepared by Government?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: The draft has not yet been prepared, but we are thinking of having one prepared in the near future.

Maulvi ABDUL KARIM: If no Bill is introduced for some time and the University withdraws its affiliation, do Government propose to take any action in the matter?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Government cannot take any action in the matter.

Kala-azar in Calcutta and other districts of Bengal.

33. SETH HUNUMAN PROSAD PODDAR: (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state—

(*i*) whether it is a fact that *kala-azar* still holds its sway over Calcutta; and

(*ii*) whether there has been any recent increase in the number of attacks from this disease?

(*b*) Will the Hon'ble Minister be pleased to state the number of attacks and deaths due to *kala-azar* during the years 1932 and 1933—

(*i*) in Calcutta; and

(*ii*) in each of the different districts of Bengal?

(*c*) If the answer to (*a*) is in the affirmative, will the Hon'ble Minister be pleased to state what special measures are being taken now to fight this dreadful disease in Calcutta?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) (*i*) *Kala-azar* is still prevalent.

(*a*) (*ii*) and (*b*) (*i*) There is no record of the number of attacks. The number of deaths has decreased as is shown in the statement laid on the table.

(*b*) (*ii*) A statement showing the number of deaths in 1931 and 1932 is laid on the table. Figures for 1933 are not available and there is no record of the number of attacks.

(*c*) There are 44 centres for the treatment of patients suffering from *kala-azar*. Arrangements have also been made by the Corporation for the examination in their laboratory, free of charge, of specimens of blood in suspected cases.

Statement referred to in the reply to unstarred question No. 33(a) (ii) and (b) (i).

Year.	Mortality from *kala-azar*.
1925	... 823
1926	... 693
1927	... 582
1928	... 514
1929	... 405
1930	... 315
1931	... 296
1932	... 241
1933	... 213 (up to November).

Statement referred to in the reply to unstarred question No. 33 (b) (ii), showing the number of deaths from kala-azar *in each district of the Bengal Presidency during the years 1931 and 1932.*

	Districts.	1931.	1932.
1.	Burdwan	144	46
2.	Birbhum	17	14
3.	Bankura	36	24
4.	Midnapore	124	64
5.	Hooghly	81	123
6.	Howrah	125	110
7.	24-Parganas	552	540
8.	Calcutta	296	241
9.	Nadia	245	261
10.	Murshidabad	74	168
11.	Jessore	296	264
12.	Khulna	313	322
13.	Rajshahi	322	262
14.	Dinajpur	1,005	1,473

	Districts.	1931.	1932.
15.	Jalpaiguri	206	145
16.	Darjeeling	98	101
17.	Rangpur	615	443
18.	Bogra	215	315
19.	Pabna	197	160
20.	Malda	296	353
21.	Dacca	1,116	1,004
22.	Mymensingh	825	877
23.	Faridpur	692	535
24.	Bakarganj	100	231
25.	Chittagong	261	196
26.	Noakhali	584	595
27.	Tippera	1,364	1,853

Ghatal circuit embankment and Shaikpur and Khasbar circuits.

34. Rai Bahadur SATISH CHANDRA MUKHERJI: (*a*) Is the Hon'ble Member in charge of the Irrigation Department aware of the distress of the locality concerned on account of the abolition and abandonment of the entire Ghatal circuit embankment and portions of the Shaikpur and Khasbar circuits in their lower reaches, within the Damodar Division in thana Ghatal, district Midnapore?

(*b*) Is the Hon'ble Member also aware that the partial abolition of the Khasbar and Shaikpur circuits has effected an unusual sand deposit from flood waters upon a vast cultivated fertile area rendering the same barren and totally unfit for cultivation of any crop?

(*c*) Are the Government considering the desirability of inquiring into the matter and of taking steps to alleviate the suffering and distress of the locality affected by such abolition?

MEMBER in charge of IRRIGATION DEPARTMENT (the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim Chuzmavi, of Dilduar): (*a*) With regard to the Ghatal circuit embankment, the member is referred to the answer given to the question asked by Rai Sahib Sarat Chandra Mukhopadhyya in the March session of the Council in 1932. With regard to the Shaikpur and Khasbar circuits the same information

applies. The area is under development for the permanent benefit of cultivators who will be well advised to grow for the present *boro* paddy and *rabi* crops which are not likely to be damaged by flood.

(*b*) Sand has been deposited in small areas in front of the breaches which have been left open. At present such small areas cannot be cultivated, but gradually finer silt will be deposited and such areas will become very fertile. In a deltaic tract this process is usual.

(*c*) Does not arise.

Dhroong khal.

35. Maulvi NURAL ABSAR CHOUDHURY: (*a*) Is the Hon'ble Member in charge of the Irrigation Department aware—

(*i*) that the Dhroong *khal* in thana Fatickcheri in the district of Chittagong has changed its course for some time past;

(*ii*) that the fertility of the land of the adjoining populous villages, through which this hill stream originally ran, has been affected;

(*iii*) that the Government revenues from forest products have also been decreased to a very serious extent; and,

(*iv*) that the village through which the *khal* is running at present, remain always under water during the rainy season which damages crops, fodders, etc.?

(*b*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of holding an inquiry into the matter and of taking necessary steps to turn the Dhroong *khal* to its original bed? If not, why not?

(*c*) Is the Hon'ble Member also aware that the Dhroong *khal* when shifted to its original bed will remove a very keenly felt want of a large number of people by supplying drinking water and improving sanitation, cultivation and navigation, etc.?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM GHUZNAVI, of Dilduar: (*a*) (*i*) Yes, the *khal* changed its course in the past at a point about 9 miles below the Forest Toll office at Dhroong.

(*ii*) and (*iv*) Government have no information at present.

(*iii*) No.

(*b*) An inquiry is being made into the matter.

(*c*) Government have no information at present.

Circle Officer of Kurigram.

36. Babu NAGENDRA NARAYAN RAY: (*a*) Will the Hon'ble Member in charge of the Appointment Department be pleased to state whether it is a fact that Maulvi Mohammad Fazlal Karim, the Circle Officer of Kurigram, has been in the Rajshahi Division for more than five years in contravention of the Government rule?

(*b*) If so, what are the special reasons therefor?

(*c*) Is it a fact that the said Circle Officer took active interest during the last Kurigram local board election and the union board election of his circle?

(*d*) Is the Hon'ble Member aware that in June last a complaint was lodged before the sub-inspector, Nageswari police-station of Kurigram subdivision, by one Maniram Kabiraj of Hashnabad to the effect that Rs. 50 was taken from him by the clerk of the Nageswari union board to be paid to the Circle Officer on the understanding that he would be made president of the said union board?

(*e*) Is it a fact that the matter was inquired into by the Circle Inspector of Police, Babu Makhan Chandra Basak?

(*f*) If so, what was the result of that inquiry?

MEMBER in charge of APPOINTMENT DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) He has been in the Rajshahi Division for more than 5 years. The Government orders are that sub-deputy collectors should not normally be kept in the same division for more than 5 years.

(*b*) The public convenience and economy in cost of transfers.

(*c*) No.

(*d*) One Maniram Kabiraj gave information at the Nageswari police-station on 21st June, 1933, that the clerk of the Nageswari union board took Rs. 50 from him and gave him hope that he would be elected as president. No allegation was made against the Circle Officer.

(*e*) No.

(*f*) Does not arise.

Mr. SHANTI SHEKHARESWAR RAY: With reference to (*b*), in how many cases transfers have been stopped on similar grounds?

The Hon'ble Mr. R. N. REID: I presume the hon'ble member is referring to the stoppage of transfer as a matter of economy. I am afraid I cannot say off-hand how many, but quite a considerable number.

Mr. SHANTI SHEKHARESWAR RAY: With reference to (*d*), has any inquiry been made into the allegations?

The Hon'ble Mr. R. N. REID: Maniram Kabiraj was referred to the court, but whether he took any further step I do not know.

Dacoities in Bengal.

37. **SETH HUNUMAN PROSAD PODDAR:** (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to lay on the table a statement showing, district by district, and year by year, for the three years ending October, 1933—

(*i*) the number of dacoities committed in Bengal;

(*ii*) the number of cases in which persons of the *bhadralok* class participated;

(*iii*) the number of cases in which Muhammadans took part;

(*iv*) the cases in which fire-arms were used?

(*b*) Will the Hon'ble Member be pleased to state—

(*i*) what steps, if any, have been taken by the Government to protect innocent people carrying on business in far-off villages from these attacks; and

(*ii*) what additional facilities have been granted to the well-to-do people engaged in business to defend themselves?

(*c*) Are the Government considering the desirability of ensuring such protection to the people following peaceful trades and professions by granting them permission to carry fire-arms?

The Hon'ble Mr. R. N. REID: (*a*) A statement is laid on the table.

(*b*) (*i*) Special police patrols have been arranged where necessary and village defence parties have been organised where possible.

(*b*) (*ii*) and (*c*) Licenses for fire-arms have been granted to persons who have applied for them and who are considered eligible under the rules.

Statement referred to in the reply to clause (a) of unstarred question No. 37.

District.	No. of dacoities committed in the years ending October, i.e.—			No. of cases in which persons of the *bhadralok* class participated in the years ending October, i.e.—			No. of cases in which the Muhammadans took part in the years ending October, i.e.—			No. of cases in which fire-arms were used in the years ending October, i.e.—		
	From November, 1930 to October, 1931.	From November, 1931 to October, 1932.	From November, 1932 to October, 1933.	From November, 1930 to October, 1931.	From November, 1931 to October, 1932.	From November, 1932 to October, 1933.	From November, 1930 to October, 1931.	From November, 1931 to October, 1932.	From November, 1932 to October, 1933.	From November, 1930 to October, 1931.	From November, 1931 to October, 1932.	From November, 1932 to October, 1933.
Bakarganj	94	88	74	2	4	4	92	84	70	2	2	1
Bankura	21	38	42	..	.	2	2	1	2	1	..	2
Birbhum	54	48	57	1	1	7	19	14	20	..	..	..
Bogra	88	37	21	..	..	..	74	28	18	8	2	3
Burdwan	99	71	60	..	..	..	49	29	28	..	..	4
Chittagong	55	72	38	[illegible]	4	1	39	48	29	4	3	3
Dacca	139	172	113	8	17	9	131	155	104	21	39	17
Darjeeling	6	13	8	..	..	..	..	1	..	1	3	1
Dinajpur	117	96	99	..	1	1	57	52	61	5	3	4
Faridpur	36	43	23	5	6	..	13	22	10	5	6	2
Hooghly	62	78	79	.	..	..	11	18	16	..	..	..
Howrah	43	51	50	..	1	2	18	22	19	1	3	1
Jalpaiguri	30	39	38	..	..	..	17	20	22	6	1	1
Jessore	44	56	37	..	2	1	12	30	31	9	15	4
Khulna	60	62	58	5	2	2	48	59	45	11	31	25
Malda	58	59	37	..	..	..	48	44	24	..	5	..
Midnapore	286	262	236	..	1	..	83	94	53	4	6	2
Murshidabad	52	52	34	..	..	..	39	33	22	..	3	..

Mymensingh	115	100	34	21	12	2	72	62	21	31	15	10
Nadia	115	55	47	..	..	..	36	11	11	2	2	4
Noakhali	4	11	11	..	..	2	4	11	9	..	1	1
Pabna	43	47	23	2	2	2	28	43	20	2	..	..
Rajshahi	72	45	43	5	1	1	48	39	28	..	1	..
Rangpur	145	66	63	1	..	1	111	53	52	4	1	2
Tippera	31	49	54	1	3	7	21	35	36	8	8	13
24-Parganas	108	99	100	..	..	..	23	36	55	5	1	..
E. I. Railway, Howrah ..	..	1	1	..	..	..	..	1	1	..	..	..
E. B. and A. B. Railways, Saidpur	2	3	..	1	3	..	1	..	..	..	3	..
E. B. Railway, Seakdah ..	1	1	2		..	1	1	..	1	..	..	1

Maulvi ABDUL KARIM: Have the introduction of police patrols and village defence parties produced any effect? Has there been any decrease?

The Hon'ble Mr. R. N. REID: The comparative figures are not with me for the moment, and I cannot give an answer offhand to that question.

NON-OFFICIAL BUSINESS

NON-OFFICIAL BILL.

The Bengal Wakf Bill, 1933.

Maulvi ABDUL GHANI CHOWDHURY: Sir, I rise to move that the Bengal Wakfs Bill, 1933, as reported by the Select Committee, excluding clause 66, be taken into consideration.

In doing so, I take this occasion as the earliest opportunity of recording my most heartfelt gratitude and thanks for the very great personal interest and care that our popular Education Minister, the Hon'ble Mr. Khwaja Nazimuddin, has taken in shaping this proposed legislation. But for his selfless public spirit, untiring zeal and driving power, this Bill would not have come to this stage to-day.

In view of certain amendments proposed by some of my colleagues, I have to recount shortly the history of this Bill. In going to do so, the first thing that strikes me is the attitude of the Government towards the Bill.

In the January issue of the "XIXth Century and After" of 1906, Sir Ronald Wilson in his articles entitled "Should Indian Mahomedans entail their Estates?" observed: "For an alien Government pledged to the strictest religious neutrality and accustomed in its own country to the extremest caution and conservation in such matters, to set about remodelling the trusts of temples and mosques, of *dharmasalas* and *khankas* and *imambaras* in accordance with its own notions of public utility is, of course, out of the question."

But happily for India, Sir, we find to-day a definite change in that attitude of absolute indifference of the alien Government. The Bill that is before the House now is itself sufficient testimony to this assertion. But for the sanction that was readily accorded by His Excellency the Viceroy and the Governor General in Council, the Bill would never have seen the light of day. The sanction demonstrates that the Government of India realised the importance of this Bill and truly gauged

the depth of public sentiment behind it. The Loc[illegible]nt has also taken a very active part and very earnestly endeavoured to ascertain the opinion of all sections of the community by giving the Bill the widest publicity and has shown no scruple in spending money unhesitatingly on this project, unproductive though from its financial point of view. Indeed, it has been possible to-day what was even unthinkable or in some cases was definitely opposed a few years ago.

Mismanagement of *wakfs* has proved to be a public scandal, and there is no doubt that it contributes directly and indirectly to the deplorable poverty, illiteracy and ill-health of the Muslim population, particularly of the Muslim middle class of Bengal. In the year 1906, Sir Ronald Wilson remarked: "I suspect that the vast amount of potential wealth locked up in ill-planned and ill-administered religious endowments, both Mussalman and Hindu, is a powerful contributory cause of that poverty of India which we all deplore....."

The Bill before the House now is projected to remedy that state of affairs to some extent.

The original Bill was introduced in this House on the 5th August, 1932, but it was sent to the lap of its foster-father, the Government of Bengal, and I must gratefully acknowledge that it has been well nursed, although it was given to win a sort of hurdle race and cross a stormy sea of opposition from interested quarters. So, Sir, you cannot expect to see the same baby as you sent to the paternal care of the foster-father. The Bill had emerged out of the Select Committee much more lean and thin. The original Bill has been chiselled, hammered, thumped and joggled to fit in with the demand of the dominant interest of the land. Truly, Professor Brook-Adams in writing the history of modern legislation remarked that "Every piece of legislation is shaped by dominant selfish interest of the day." Whether this thumping and joggling of the original Bill will prove beneficial in the long run, it is not for me to speculate but for the future generation to judge.

Notwithstanding the zeal and earnestness with which the Bill has been received and the sincerity and seriousness with which its provisions have been scanned and criticised by various public bodies and some of the members of this House in the Press, I have not the least doubt that the baby will gain some more flesh and blood before it goes out of it. If it, however, does not receive anything more here, I shall not be surprised nor disappointed. I am a believer in the force of circumstances and am contented with the little that is given to me to make an experiment and to work sincerely and seriously for it. Legislation is, after all, experience. If this lean and thin baby gets more fresh air and better environment, I am certain it will grow vigorously and will know how to add more flesh and blood to its constitution with increasing years. I believe it is not so much the axe as the

axeman that cuts. Everything will depend on the Curator of Allah in the office of the Commissioner of Wakfs. He will be a sort of super-*mutwalli* to take care of the God's acre in this province. Considering the heavy responsibility of his office, I made some provisions in the original Bill to define his qualifications and method of his selection and appointment. But the wisdom of the Select Committee did not allow those provisions to stand. I hope the Government will lay down such procedure and method as would ensure the selection of a person of sufficient driving power, initiative, sterling character and independent spirit to this high office.

It is a matter of legitimate satisfaction to say that the Government has disproved the charges of indifference and obstruction to this Bill insinuated against it on the day of its introduction. The Bill, Sir, was not only fortunate in having received the ready sanction of the India Government but also in having obtained the blessings I may say of four eminent High Court Judges.

You all know, Sir, that the Local Government circulated the Bill for opinion and appointed the Sir Zahid Suhrawardy Committee to report on the Bill. On the one hand volumes of opinions were received from all parts and from all quarters of the province and on the other hand the Sir Zahid Committee, after having examined, submitted their report in the shape of a concurrent Bill. The original Bill, the volumes of opinions and the experts' report were before the Select Committee. The result of their deliberations is now before the House. This Bill is verily the net product of the labours of the experts and the laymen.

I hope, Sir, the memory of this House will not be too short. On the day the original Bill was moved from this floor, an amendment for its circulation was moved by the Hon'ble Education Minister, Mr. K. Nazimuddin, but it was vehemently opposed by esteemed colleagues—Mr. Abul Kasem of Burdwan and Mr. A. K. Fazl-ul Huq. Mr. Abul Kasem said: "We want something to be done and that at once." Mr. A. K. Fazl-ul Huq said: "Why should we wait till November or December or January? We should deal with the matter here and now."

Sir, there is no reason to doubt the sincerity of these two weather-beaten and long-experienced representative sons of their province and am sure, they voiced the true feeling of the community on the 5th August, 1932. And to-day on the 19th February, 1934, after about two years' broadcasting of the Bill, I can with confidence join with the chorus: "We have waited too long. We cannot wait any further."

It is whispered in some quarters that the minutes of dissent from 13 members out of 19 members of the Select Committee make out a case of recommittal. But, Sir, a closer analysis of the minutes of dissent

shows that they relate only to the question of the levy and *wakf-al-al-aulad*. The controversy has since been seriously discussed in the Press and from the amendments it appears that not a single member, not to speak of the dissentients, has proposed any amendments for the total abolition of the levy. Of *wakf-al-al-aulad*, the amendments proposed show an amicable settlement of the controversy. On all other points of the Select Committee Report, all the members thereof were unanimous except on some minor points, which have been taken in some of the proposed amendments. Therefore, on that ground of divided report, the plea of recommittal cannot stand.

The amendment for recommittal seems to be reactionary. I am surprised to find the name of my valued friend, Mr. Abul Quasem of Khulna, associated with it. From the rest of his amendments it appears he has taken enormous pains in scrutinising the Bill line by line and clause by clause with a lynx eye, to use one of his favourite phrases, and with all the wealth of his learning and experience. I find some of his amendments are very reasonable and purport to show that he bestowed considerable thought and reflections on the provisions of the Bill. I am tempted to accept some of those amendments with the sanction of the House. His amendment to clause 5, demanding the appointment of the Board within six months, shows his great anxiety and burning impatience. This further indicates, I presume, how keenly he must have been feeling for the thousands of dumb-driven beneficiaries, who are looking forward to the shower of this legislation day in and day out. The spirit of his amendments is thoroughly inconsistent with his amendment for recommittal.

Rai Bahadur Dr. HARIDHAN DUTT: On a point of order, Sir. Is the member in order in referring to the amendments which are not yet before the House?

Mr. PRESIDENT: Maulvi Sahib, you had better not do that.

Maulvi ABDUL GHANI CHOWDHURY: But they are in the list of business.

Mr. PRESIDENT: That is true, but we do not know whether they are all going to be moved.

Maulvi ABDUL GHANI CHOWDHURY: All right, Sir. I bow to your decision.

It is now, Sir, more or less a matter of historical interest to analyse the points of agreement and difference between the original Bill and

the Report of the Select Committee. It appears however, Sir, that the frame and structure of the original Bill has been retained. The object with which it was originally designed has also been duly appreciated. The centralisation of control and supervision over the *wakf* properties and the *mutwallis* through one sole corporation, the Commissioner of Wakfs with an Advisory Board, the provision for the levy, the principle of representation of the Muslim public by the Commissioner of Wakfs in Court, the provision for getting the *mutwallis* punished by the Commissioner, provisions laying down the functions and powers of the Board and the Commissioner, provisions for the control of the private *wakfs* and so on as were originally incorporated in my Bill, have been accepted by the Select Committee. The provision for compulsory enrolment of *wakf*, the purpose of which was intended to be served by sections 34(8) and 38 of the original Bill, has been accepted by the Select Committee as recommended by the Sir Zahid Committee. Provisions giving judicial functions to the Commissioner and his subordinate officials proposed to decentralise administration, the inevitable result of centralisation of control, suggested in the original Bill, have not been accepted by the Select Committee. The tribunals suggested by the Sir Zahid Committee have also been disapproved. In course of time, as the Board will function, it will realise the difficulties in achieving the end of this legislation through the existing system of dealing with cases under section 92 of the Code of Civil Procedure and other statutes. For the attainment of quick disposal of business, the Board will have to decentralise its control through branch establishments and subordinate officials as contemplated in the original Bill. What is denied to-day, I am confident will have to be thought of tomorrow.

The Select Committee however, Sir, has conceived a golden mean, realising the importance and necessity of some modification in the judicial system. They have proposed a *wakf* tribunal to be composed of a Special Judge assisted by two assessors. The wisdom of this scheme is now before this House for consideration. To my mind, Sir, until the new Act is put into full operation and the Wakf Board and the Commissioner have been given sufficient time and opportunity to give effect to its provisions, the existing tribunals in the transition period should continue. But at the same time, in order to remedy the evil inherent in the existing system, some concurrent judicial functions should have been given to some officers under the Act, so that they might prove useful and make the use of the existing machinery rare and less frequent. That would have gone a long way to make the Wakf Act self-contained and self-acting and avoid duplication, complication, delay and expense. The assessors, who will be mere automatons will be of very little service, I am afraid. Such a proposal was once made by the late Mr. Ameer Ali, and it was opposed by the then Lord

Chancellor of England in the House of Lords on the 9th July, 1897. The assessors will not judge and will not decide, but will give their *fatawas*, which will not be binding on the Judge, who will always feel competent to construe the authorities clothed in English language. What benefit is expected out of this scheme? They will simply delay matters and cloud the issues. On the other hand, if their *fatawas* are not accepted, they will come out and create unnecessary agitation. At times, in order to please the Judge, they would be tempted to make *fatawas* to order, as the *Maftis* and *Moulvis* of Company's Courts often used to do, as was discovered by Sir William Jones. The beneficiaries, Sir, require speedy disposal, quick remedies and the least cost for getting the remedy. However, Sir, I leave the matter to the wisdom and experience of this House.

The most important provision of the original Bill that has been rejected by the Select Committee related to the creation of an Education Fund. From the point of view of expediency and practicability, Sir, I think the Select Committee has acted wisely in refusing to make a statutory provision for it. But, Sir, if the Commissioner and the Board keep the importance of such a fund in view, they will be able to organise it even under the power that the present Bill contemplates to endow them with. With these few words I beg to move that the Bill, as reported by the Select Committee, excluding clause 66, be considered by the House.

The motion that the Bengal Wakf Bill, 1933, as reported by the Select Committee, excluding clause 66, be taken into consideration, was then put and agreed to.

Clause 1.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in clause (1), in line 2, for the figures "1933," the figures "1934" be substituted.—

The motion was put and agreed to.

The question that clause 1 as amended stand part of the Bill was then put and agreed to.

New clause 1A.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that after clause 1, the following clause be inserted, namely:—

"1A. (*1*) For the purpose of making a survey of *wakf* properties existing at the date of the commencement of this Act, the Local Government may, by notification, bring Chapter IV into force on such date as

may be specified in the notification, and thereupon, notwithstanding anything contained in this Act, the Local Government may appoint persons, either by name or by their official designation, to perform the duties imposed and exercise the powers conferred by that Chapter on the Commissioner and the Board.

(2) The cost of survey under sub-section (1) shall be paid to the Local Government from the Wakfs Fund when that fund is formed under section 56."

I would like to take this opportunity to make clear the attitude of Government on the financial question involved in this Bill. Their attitude is that they are not prepared to accept any financial responsibility for giving effect to this Bill and this is one of the main reasons why it has been necessary to bring forward this amendment. At the present time, we have got no idea as to what the income from the *wakfs* will be after the levy has been imposed, and until we know that it will be very difficult or rather awkward if we appoint a Commissioner for the Board and all the administrative machinery is put into operation without having an idea of the expenses that will have to be met. Therefore, the proposal is that for the first year Chapter IV will be enforced and an officer should be appointed who will be able to enrol the *wakfs*; so far as enrolment is concerned, if we have the *wakfs* enrolled, it will be possible to know what is the total number of the *wakfs* in Bengal, what their income will be and also what the rate of levy should be. Having obtained that information, it will be possible for us to frame our budget and our schemes according to the means at our disposal. Therefore, this amendment will help us in enforcing the Act quicker. Under this scheme, it will be possible to take a loan of a very small sum of money; for example, we can appoint an officer on a monthly sum of Rs. 500 and a small office staff for the purpose of enrolling *wakfs*, which may, say, cost another Rs. 500; that is to say, it will cost us Rs. 1,000 a month for nine months. And this will give us an idea as to how many *wakfs* there are in Bengal and what their income is. On the other hand, from the information which we have obtained, we know that it will cost something from Rs. 20,000 to Rs. 30,000 to have a census of *wakfs* in Bengal without the assistance of this Act; that is to say, in the ordinary way, if our registry offices are searched and information obtained from the documents registered there, as to the number of *wakfs* in Bengal, it will take from 6 to 9 months or perhaps a year, and it will cost something like Rs. 20,000 to Rs. 30,000. Even then we shall not have full information about all the *wakfs*, because, as you may have noticed from the definition of a *wakf*, a *wakf* can be created orally and also without any registered document. All *wakfs* are not necessarily registered and all the *wakfs* that are in Bengal cannot be put on our list if we do it without the assistance of this Act. Again, as regards *wakfs* created before the Registration Act

came into force, we shall not be able to have any information about them. Therefore, this is a simpler and easier way of having an idea of the number of *wakfs* and their income, and that is why I move this amendment.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Is there really no simpler or easier method of getting the information which the Hon'ble Minister wants to get by virtue of this amendment? It seems to me that the quicker and better course would have been to ask the Collectors to get all this information and without even spending the Rs. 12,000 or Rs. 9,000 that my friend is thinking of spending for gathering this information. Does the Hon'ble Minister lead us to believe that the Collector and his staff are so very overworked that it will not be possible for them to collect all these informations? I cannot reconcile myself to this view; nor can I reconcile myself to the view that his office is so very overworked that this information cannot be acquired without all these expenses. It is not a matter in which a difference of opinion should be expressed, but at this time of financial stringency will it not be more proper for the Hon'ble Minister to try to get this information through the existing staff that is at disposal? Suppose you appoint an officer on Rs. 500 and just a few clerks on another Rs. 500; but what amount of work will they do? If they are to do this work unaided, I do not believe it is so very easy for one man to do all this work. You have got, I think, about 500 officers under you doing only one-third of the previous work nowadays; their services can be requisitioned without any difficulty and thus you can save the poor community of this sum of Rs. 9,000 or so. This is my suggestion, and I appeal to the Hon'ble Minister to consider this suggestion, because, after all, it does not in any way interfere with the main provisions of the Bill. I am not speaking against the Bill, but I am simply throwing out a suggestion whether my friend cannot really economise and save this money my getting out a little more extra work from officers who have practically nothing or very little to do at the present time.

Maulvi TAMIZUDDIN KHAN: Sir, I want to say only a few words on this amendment. One of the difficulties with regard to the amendments put forward by Government is that we have had really a very short notice of them and we have not been able to give notice of any amendments to those amendments. Therefore we shall have to deal with the important questions raised by these amendments offhand on the floor of the House. Even if some of these amendments require slight alterations, it is very difficult to do so on the floor of the House, while the Bill is being considered. However, as the matter now stands, we must accept the position.

Now, my esteemed friend the Nawab Sahib has raised a very pertinent question, and that is whether the work of enrolling and taking statistics could not be done in a simpler way. He suggested the idea of Collectors doing this work more quickly and economically. So far as this amendment is concerned, I do not see any difficulty in doing that, because the amendment says that the Local Government may appoint persons either by name or by their official designation to perform the duties imposed under a certain chapter of the Act. Therefore, the Collector may very well be appointed to do those duties. I do not know what the idea of Government is; but that seems to me to be the case. But there is one thing which has fallen from the Hon'ble Minister that seems to me to be rather strange. The Government's attitude is that they are not prepared to take any financial responsibility in the matter. Most of these *wakfs* except those which are private *wakfs*, or *wakfs-al-al-aulad*, are charitable institutions. I do not see that there is any justification on the part of Government to deny any responsibility in this matter. Whatever arrangement Government may make, and whatever cost is incurred by Government in administering this department, will have to be paid by these charitable institutions. The money that will be thus spent running the Board that will be constituted would otherwise have gone to charity. It is highly regrettable that such a large amount of money will be swallowed up in the administration of the Act that we are going to pass. But circumstanced as we are, we are bound to accept what the Government propose to do, because we cannot compel Government to accept any financial responsibility. Therefore I am bound to say, although I say this with a good deal of regret, that we must accept the position. So I support the amendment.

Maulvi ABDUL KARIM: I rise to support the amendment. Presumably, a Government officer will be appointed for the survey of the *wakfs*, and I think it would be gracious on the part of the Government if without charging the expenditure on the proposed fund they had done this preliminary work which would not amount to a very large expenditure from their own funds. There is no doubt that without a survey nothing can be done; unless and until there is a survey, we cannot know the amount that can be realised from the levy of the tax. So a survey is essential and ought to be undertaken. But what I mean to say is that this small amount that will be required for this preliminary work should be at the expense of Government in order to give a start to this Act.

Mr. H. B. WILKINSON: One of the conditions which Government must lay down is that they can take no financial responsibility for the operation of this Bill. This clause has been put in with the sole object

of expediting the possibility of enforcing the Bill. If the machinery is not to be self-supporting, it might be many years before money would be available to give effect to this Bill.

The Hon'ble Mr. Khwaja Nazimuddin's motion was then put and agreed to.

Clause 2.

Rai Bahadur KAMINI KUMAR DAS: I beg to move that in clause 2, in line 2, after the words "to all *wakfs*" the words "except *wakfs-al-al-aulad* or private *wakf*" be inserted.

Sir, I, though a Hindu, beg to move the above amendment to the Wakf Bill. I do not know what to say, but this much I know that I should say something. From the time of Warren Hastings we have got one thing from the British Government and that is the assurance that there should be no interference with our *Shastras* and that is also what we find from the Proclamation of our Gracious Majesty. Therefore, Sir, when we find that anything comes in which in any way interferes with our *Shastras*, we should always be careful to see that this is not done. There is the Wakf Bill, and the Wakf Bill is going to be passed. I do not know when there is a Muhammadan law in existence, when there are the Hindu *Shastras* and when we have got the assurance that our *Shastras* and the *Shariat* will be observed, why we should be asked to deprive ourselves of the benefits of these religious laws for something else? That is a thing which I fail to understand. Whatever it may be, when the question of public trust comes in, I submit, Sir, that my hon'ble friends must have their say. But in regard to these private *wakfs*, I think that the interests of the *wakifnamas* should be carefully guarded against. What is true for the Hindus must perforce be true in the case of Muslims also. The main object should be that after the death of the proprietor the property should be managed by *wakifs*. Therefore, Sir, if we increase the private *wakfs*, I think the property should be managed by certain persons in a certain manner. I do not think it is desirable that there should be any interference with the *wakifnamas*. With these words I move my amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I am surprised that where others hesitate to tread, my friend has rushed in and moved his amendment without studying the whole implication as to what this amendment might mean. He has quoted conveniently enough, as is sometimes done by others, the *Shastras* and the Muslim law to suit his own purpose, but I think that for that purpose he has referred to the days of 1792 or thereabouts, forgetting that this is the year of grace 1934, when the powers of the Legislature are supreme. After all,

Sir, those who think that the Muslim law does not require codification are hopelessly mistaken, because in view of the general ignorance and the various interpretations what that law actually is should be known. But apart from that aspect of the question, I think, Sir, that so far as this question is concerned many will agree with me that the Legislatures in the past have put on the statute book many an Act with a view not merely to supplement, but also to clarify the Muhammadan law, and the best example which I can cite for the benefit of my hon'ble friend, who by-the-bye is a lawyer, is, when the Muhammadan law was not considered to be valid in the British courts. So, I submit, that it is for the Legislature to set it right. If that is so, Sir, I do not see any reason why a measure of such importance should not be passed. After all, it is no interference with the Muhammadan law, but it is an attempt to clear all doubts as regards Muhammadan law on *wakf*. I submit, Sir, that the Rai Bahadur is wrong when he thinks or says that this piece of legislation is trying to upset or interfere with the Muhammadan law. On the other hand, I think, there is full justification for enacting a measure like this, inasmuch as the procedure of the Muhammadan law is not adhered to in these modern days, because we feel, Sir, that in most cases *wakf* properties is either maladministered or misadministered in a manner detrimental to the interests of the general public. Well, Sir, it is the duty of the State to intervene in such cases in the interests of the public. With these few words I oppose the amendment.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, Government oppose the amendment.

Rai Bahadur Kamini Kumar Das's motion was then put and lost.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, I beg to move that after clause 2, the following be added, namely:—

"Provided that this Act shall not apply to the Dawoodi Bora community."

[As Babu Satya Kinkar Sahana was sitting in the official benches, the Hon'ble the President remarked: I am glad to see Mr. Sahana enrtusted with a portfolio. (Laughter.)]

Sir, it will be necessary before I deal with this question to explain briefly the history and the present position of the Dawoodi Bora community, for whose exemption from the operation of this Act I am moving. As is well known, Sir, the Mussalmans all over the world are divided into two main sects, *viz.*, the Shias and the Sunnis. The Shias, again, Sir, are divided into various sects, the chief of whom are those who either pay obeisance or follow the two Imams, *viz.*, Musa Kasim and Ismail. The Ismailites are again divided into two sects,

namely, those who are the follwers of His Highness the Aga Khan and those who follow His Holiness the Mullaji. These Dawoodi Boras constitute a small community, whose total number in Bengal does not exceed 250 or so, though their strength in Bombay and the Central Provinces is greater. Besides, they are represented in other provinces also. Their claim is that they should be exempted from the operations of this Act on the ground that according to the tenets of their religion and belief they stand on quite a different footing from other Muslims. The members of the Dawoodi Bora community offer allegiance to His Holiness the Mullaji as a representative of the Imam, whom they consider their religious head as the representative of the God whose messages and behests are conveyed to them by him.

Maulvi ABUL QUASEM: Is the Mullaji the absolute representative of God?

Khan Bahadur MUHAMMAD ABDUL MOMIN: The Dawoodi Boras believe that the Mullaji is the absolute representative of God in this world. They consider him to be infallible. I shall personally quote an extract from the Bombay Law Reports, which elucidates their position. The official position of the Mullaji Sahib is thus described in Campbell's *Bombay Gazetteer* at page 31:—

"Their leader both in things religious and social is the head Mulla of Surat."

Then again, Sir, we find in paragraphs 78 and 81 of the judgment, see 24, Bombay Law Reporter, pages 1070 and 1071, suit No. 941 of 1917, the following statement:—

"The whole of the Dawoodi Bora community regards his Holiness the Mullaji Sahib as the representative of God on earth, being the viceregent of the Imam in seclusion. The community firmly believe that, according to their religious tenets, in His Holiness the Mullaji Sahib for the time being must be vested all *wakfs* for the benefit of the community, and that as a *Dai-ut-Mutlak*, he has complete powers of control and management and that he cannot be subjected to any restriction or interference thereto like people in whom *wakfs* of other communities are vested may be subjected."

Here, Sir, we are dealing with the Wakf Act as far as they relate to the personal law of the Muhammadans, mainly of the Hanafi and also other main sects. We have heard a good deal of agitation both in the Press and on the platform against this present Bill, because in the opinion of some people some of the provisions militate against the laws of Islam and the *Shariat*, and on that ground a considerable number of orthodox people belonging even to the Hanafi sects object

to the present Bill. If that were so, their objections would be valid on such a ground and we could not have lent our support to the Wakf Bill of which we have got so many supporters in this House including myself. Can we then reasonably say that this Wakf Bill does not infringe the personal laws of the Dawoodi Bora as interpreted by the Mullaji and the *Shariat*. I do not think, Sir, that any of us has any right to impose any religious impediment to the belief of any minority community, such as the Dawoodi Bora community. (MAULVI ABUL QUASEM: "What about the Shia community?") The Shia community, I admit, is not represented in this House. (KHAN BAHADUR MAULVI AZIZUL HAQUE: "Question. The Shias object to the provisions of this Bill.") I might inform the House that the Dawoodi Bora communty, whose number in Bengal comes to only about 250, have objected to a man—they have objected and protested most vehemently against their inclusion within the scope of this Bill. So, Sir, even on the ground of self-determination, I think that the Dawoodi Bora community should be exempted from the operation of this Act.

In this connection, Sir, I should like to take this House back to the year 1923 when Maulvi Abul Kasem's Bill was considered in the Legislative Assembly. At that time the Dawoodi Bora community opposed the Bill, and their spokesman, Mr. Barodwala, tabled an amendment asking for exemption so far as they were concerned from the operation of the Act. It was on account of this protest that section 13 of the Act of 1923 was enacted, giving the Provincial Governments power to exempt this community from the operations of the Wakf Act in that province. This was given effect to in Bombay and in the Central Provinces. Up to 1925 this community enjoyed this exemption in Bombay and is still enjoying it in the Central Provinces. In Bombay, however, this exemption has been withdrawn, and there has been considerable agitation in this matter, and the agitation has not yet subsided. Since then, another attempt was made in the Legislative Assembly to bring a Bill to exclude by statute this community from the operation of the Wakf Bill, but for reasons which are not relevant here, and which are not on record, sanction was not accorded to its admission. Now we are going to enact a Bill for Bengal, and naturally this community is very much perturbed because if they are not excluded, it will cause a breach in their personal law. So far as Bengal is concerned, I may tell the House that the only two *wakf* properties which this community have are a burial-ground and a mosque, both vested entirely in the Mullaji. Therefore, from an administrative point of view the Bill is of no importance whatever so far as that community is concerned. Of course, it may be said that in future this community, which is very rich, very wealthy, may endow a very large number of properties in Calcutta and other places in Bengal, and it is necessary to protect these properties from the hands of dishonest

people. I am afraid if they are forcibly brought within the scope of this Bill, the effect will be just the other way, namely, that any intending member of the Dawoodi Bora community will leave no money in *wakf* endowment in this province simply because of the fact that the authority of the Mulla may be interfered with by the *wakf* law. From that point of view also it is undesirable that they be forced into a position which they consider a grievance, and will refuse to make any *wakf* endowment so far as Bengal is concerned. It will probably be argued that it is unnecessary to put in a particular proviso as I have tabled in clause 2, because in clause 3 of the Bill it is possible for the Executive Government to exempt the Dawoodi Bora community later on, when they will find that this community want exemption. I may explain here that clause 3 as it stands is not intended to cover such class of cases. It says: "The Board may exempt, with the previous sanction of the Local Government, any *wakf* from all or any of the provisions of this Act." The real intention of this clause 3 is to exclude *wakfs* of small importance, not having an income of more than Rs. 300 or Rs. 400, and it will probably be very embarrassing to the *mutwallis* if they are brought under the administration of this Bill. That is the intention of clause 3. Even if the point be stretched, and clause 3 may be taken advantage of to exempt this community, the objection still remains. In Bombay, this particular community was exempted by the Government immediately after the passing of the Act of 1923, but subsequently when a particular Education Minister came into power, for some reason or other, the exemption was withdrawn, which perhaps could not have been done if there was a statutory provision in the law. They can reasonably be afraid of similar treatment in Bengal. Even now here in this Council we hear of some opposition to their exclusion. They can very well apprehend that in future they are not likely to have any representative in the Government, and the Government will be in the hands of a majority community who will want to force their will on them and impose similar treatment on this community. They can very reasonably apprehend that their interests may not be properly looked after. Therefore, their claim to be exempted by statute is, I think, perfectly reasonable. I do not see any reason why we should force them to come under any particular legislation when that particular community does not want it. We asked for this Bill, we welcome it because the majority of the Hanafis in Bengal want that there should be some sort of control over their *wakfs*, which in the past have been mismanaged. But the Dawoodi Bora community do not want any control over their *wakfs* in any way; none of their *wakfs* have been in any way maladministered. Their initial objection is that in the case of the Dawoodi Bora community, the *wakfs* are fundamentally and essentially different from the *wakfs* that are created in other sects of Mussalmans. The official position of the Mullaji Sahib is that "he is the leader of

the Dawoodi Bora community in things religious and social. Short of worship he is treated with the greatest respect. On both religious and social questions his authority is final."

Therefore, you will find that the Mullaji is really the custodian of all *wakf* property created by the Dawoodi Bora community, and as His Holiness the Mullaji is the representative of God on earth for them, they have naturally good reasons to object to any interference or control over the Mullaji so far as these properties are concerned. The Mullaji has complete power of management and control over the properties, and he cannot be subjected to any restrictions by other communities——(A VOICE: How do they exercise the power of control.") In many ways, but we are not concerned. We have no right to say that their representative should be under our control when they do not want such control. That is their personal law and nobody else has any right to interfere with it. This is the precept of self-determination which we have no right to brush aside in this case. With these words, I beg to commend my amendment to the acceptance of the House.

Maulvi ABUL KASEM: As a matter of personal explanation as well as my own opinion on this motion of the Khan Bahadur, I claim the indulgence of the House for a few minutes. I have heard with patience, with interest and I may say with pleasure, the elaborate speech of the mover of this amendment. I do not care at all whether the Dawoodi Bora community are exempted or included in the operation of this Bill, because they are very few in number, and can almost be counted on the fingers of one's hands. We wanted the law for the purposes of Bengal Mussalmans, and I am afraid as we have no Dawoodi Boras among us, it does not concern us much, but I want a little information on this subject from the mover of this amendment, or from the Treasury Benches, wherever it should come from. It was said that the personal law of the Mussalmans should be respected. Certainly it is to be, not only by the Legislature, but it has been respected by the Queen's Proclamation. I want to know what personal law is meant. Muhammadan personal law is neither a myth nor a story, but it is the tenets of the *Shariats* which have been laid down since the 14th century; Maulvi Tamizuddin Khan and Khan Bahadur Azizul Haque have said: Nobody has any right to interfere with the law of the *Shariat*; and this law does not interfere with the law of the land. Khan Bahadur Momin has read an extract showing what the representative of God on this earth with his powers and his limitations is, and therefore it will be very impertinent on the part of anybody, be he the Legislative Council for the matter of that, even on the part of the Government of India to interfere with

the privileges and prerogatives of the representatives of God. But I want to know whether the Dawdooi Boras are not governed by the ordinary Mussalman law in relation to succession, inheritance and other matters. I am not a *Pundit* nor a lawyer, but as an old Mussalman I know that the Mussalmans have got several schools of thought under which each section is governed. The Hanafi has been mentioned and mentioned too much because it is the law. Then there are the Sharifi, the Mulla, but under which law do the Dawoodi Bora community come? (A VOICE: "They come in as Shias.") But there is Shia as well as Sunni law, which is divided into four parts. I started by saying I am not a lawyer, but what I want is a little information as to which school of the Shia law does the Dawoodi Bora belong? It is certainly true that when the Mussalman Wakf Law of 1923 was about to be passed, a great deputation of the representatives of the Dawoodi Bora community came to Delhi and invited the Hon'ble Home Member, and he was so nervous that another member came to his rescue, and they found a way out of it by saying that the Local Government can exclude anybody it likes, and it is well known that the Local Government of Bombay did exclude the Dawoodi Bora community from the operations of that Act. But I think that Khan Bahadur Momin is not correct in saying that because Kazi Kabiruddin became the Minister for Education he wanted it——

Khan Bahadur MUHAMMAD ABDUL MOMIN: I did not mention any names.

Maulvi ABUL KASEM: And therefore it was excluded. But I do not mind saying, but the fact is there, that there was an agitation among these Dawoodi Boras themselves for its exclusion and I would refer Khan Bahadur Momin to the judgment of His Lordship the Chief Justice of Bombay in the matter of the case of some other Mullas. But there is another thing my friend says that we, the Hanafi, are in the majority and 90 *per cent.* of us want the law; but why should 10 *per cent.* suffer from it? I say with due respect that if any particular *wakf* controlled and maintained by the Hanafi or Sharifi and Mullas is so constituted that the persons benefited or interested are opposed to the operations of this Act, that particular sect should be excluded from the operations of this Act. It is not the question of personal law in Calcutta or personal law in Dacca or Bogra, or anywhere else. It is not a question whether the person benefited by the *wakf* wants it or not, but it is a question whether the majority want it. I do not mean to say that persons who are interested in the *wakf* are necessarily opposed to the Act. I think

that as it is a matter of Kabarsthan and His Holiness the Mullaji who represents God, it is not our business to argue but to submit.

(The Council was then adjourned for 15 minutes.)

(After adjournment.)

Mr. A. F. RAHMAN: Sir, I am sorry to find myself in disagreement with Khan Bahadur Abdul Momin, the mover of this amendment. I have no violent feelings in this matter, but my objection is based on a question of principle. I have not been able to understand the attitude of Maulvi Abul Kasem. After all that he has said, he has succeeded in preserving the secret of his attitude, but I feel that if statutory provision is made for safeguarding sectional interests, it would be a dangerous principle. It will drive a wedge in the Bill, and it is quite possible that in course of time other sections and sects within the Moslem community will come forward for the same privilege. I feel that clause 3, which Khan Bahadur Abdul Momin thinks is not wide enough, is wide enough to exclude any or any class of *wakfs*. The mover has made historical references, but his whole argument is based on an element of fear of a particular community. If for the sake of fear an exemption is going to be granted by statute, there would be no limit to such provisions that will have to be made. Under clause 3, it is possible for Government to exempt any community by means of a notification. If the community has got any apprehension or have any serious objections, they can move Government and by notification they could be exempted. Khan Bahadur Abdul Momin has said that the number of *wakfs* is only two and the community is exceedingly small. Therefore, I do not think that it is necessary by statute to exempt these two *wakfs* only.

Maulvi ABDUL KARIM: I beg to support the amendment of my friend Khan Bahadur Abdul Momin. My ground of support is that this is not a Government Bill. This Bill has been introduced by a representative of the Hanafi community on account of a demand made for it. Here is a small community who do not like to come under the operation of this Bill, and I see no reason whatever why they should be forced to come under it. Had it been a Government Bill and Government wanted all the Moslems to come under the Act, I could have understood the position, but the position here is that the Bill has been brought into this Council on account of a particular demand of a particular class of Moslems. If all the Shias in Bengal unanimously say that they ought to be excluded from the operation of this Bill, I believe that it is quite reasonable to exclude them. On this ground I think it is desirable to exclude them.

Dr. NARESH CHANDRA SEN GUPTA: I should not be understood to have taken sides on a question which primarily affects the Moslem members of this Council. I find a technical defect in the amendment proposed. The amendment proposes that this Act shall not apply to the Dawoodi Bora community. In collocation of words this becomes incongruous, because section 2 says that this Act shall apply to all *wakfs*. It does not refer to any community. I think the amendment ought to have been that this Act shall not apply to the *wakfs* created by the Dawoodi Bora community. I have listened to the very learned speech delivered by the mover of the amendment, and I certainly think that he has made out a case for exclusion of the Dawoodi Bora community on technical grounds, because according to the Dawoodi Bora community all the *wakfs* are vested in an authority which is outside the Presidency of Bengal. It may be doubted how far the Board constituted by the Legislative Council can obtain the personal compliance of a person who lives permanently outside the jurisdiction of Bengal to many of the orders which the Board may make. If it were different, if the *wakfs* had not been vested in the Mullaji who is outside Bengal but in local trustees, it might have been different, but if it ultimately vests in the Mullaji, it is rather difficult to see how by a legislation of the Bengal Council we can really touch him. That is certainly an important point of distinction, and besides that the will of this community which has been expressed against the Bill is also entitled to considerable weight. But at the same time I must say that the community has not served the members of this Council as well as they might have with further information. What we are concerned with is not the Dawoodi Bora community, but the question of proper administration of *wakfs*. The primary thing to consider in connection with any application for exemption would be whether the *wakfs* in respect of which the exemption was sought were properly administered or not. On that question the Bora community has not placed before us any materials whatsoever. We are not in a position to say on any evidence which has been produced before us either in the Select Committee or here that the two *wakfs* of the Bora community are properly administered. That is a thing which ought to have been before us before we could be asked to exclude these *wakfs*. Because whether it is a Dawoodi Bora or Shia or Sunni, or whatever it is, whenever a *wakf* is established it becomes a public charitable endowment. It is for the benefit of the poor ultimately, and the poor do not include only the members of the Dawoodi community alone. So it is a public charitable trust, and the Government and the Legislature can certainly see that the trust is properly administered. We are, therefore, in this difficulty that we have no materials upon which to pronounce a judgment as to whether there is in the case of the Dawoodi Bora *wakfs* any reason to apprehend that they are not properly administered, and

that they should be looked after by legislation. Nevertheless, having regard to the fact that this Act undoubtedly means an incursion upon the rights of some persons—not upon the *Shariat* certainly—but incursion upon the privileges which have been enjoyed by certain people for a long time, legally or illegally, I think that it would be wise to go upon the line of least resistance to legislate for those communities only who want such legislation and to leave out those communities who do not want it. Mr. Rahman thinks that the statutory exclusion of one community would be wrong and he thinks that it would be better to rely upon clause 3 of the Bill. But I happen to differ. In my judgment, clause 3 of the Bill ought to be deleted, and I will have to make my submissions on that point when I move my amendment on that clause. It is absurd to my mind to create a body of laws and leave it to the executive body to play ducks and drakes with them. But if, on the other hand, any exclusion is to be made, then it is sound policy to make it in the statute and not leave it to be done by bureaucratic legislation. The Legislature will be abdicating its authority if it allowed the executive to do so; the exclusions as far as possible should, in my opinion, be done by statute.

Mr. H. S. SUHRAWARDY: If I had any doubts in my mind as to what should be our proper answer to this amendment, they have been dispelled by the speech of a Maulvi Abdul Karim. I have very great sympathy with the Dawoodi Bora community; in fact, I should be prepared to recommend or to make representations on their behalf to the Commissioner of Wakfs that their *wakfs* should be excluded from the purview of this Bill, but I would not be prepared to have that inclusion embodied in the Bill, when that is being sought on the ground that this Bill is the Bill of a private member and not of the Government, and that this Bill has been introduced by a Hanafi member of this Council. To my mind it makes not the least difference whether this legislation has been introduced by a private member or has been introduced by Government, and it will be the duty of this Council, by whomsoever this Bill has been introduced, to see that the Bill serves the good of the greatest number. Further, I dislike intensely the insinuation that because a member belonging to the Hanafi sect is in charge of this Bill it makes a difference to his outlook so far as the good of the greatest number is concerned, and that it should be considered that it is a Bill which is being forced down the throats of non-Hanafis. In order, therefore, that there may be no doubts upon this point, I would oppose the amendment of Khan Bahadur Abdul Momin without the least hesitation. Sir, the speech of Dr. Sen Gupta left us in great doubt until the very end as to on which side he was going to cast his vote. Even now I am unable to understand what he means by his speech. If clause 3 exists, then certainly the amendment of Khan Bahadur Momin should not be

carried; if clause 3 does not exist, then there is some case for the amendment of the Khan Bahadur. Now, Dr. Sen Gupta says that he would like this amendment to go in and clause 3 deleted. I am afraid, however, that this position will not arise in the course of the proceedings by reason of precedence, because this amendment will be put to vote first before clause 3 is put to the Council. If clause 3 had been put to the Council first and its fate decided in the negative, then we could have supported Khan Bahadur Momin's amendment. But inasmuch as that will not happen, the right thing for Dr. Sen Gupta would be to vote against the amendment of the Khan Bahadur, for clause 3 is going to remain in spite of his efforts to the contrary. Sir, I do not wish to be misunderstood by the Dawoodi Bora community as regards my position with regard to them. If they can make out a strong case for exclusion of their *wakfs* from the provisions of this Act (which I have no doubt that they will be able to), if they can make out a case that their *wakfs* are being properly administered or if they can make out that no outside people except His Holiness the Bara Mullaji should interfere in the matter of their *wakfs*, I have not the least doubt that the Minister or the Commissioner of Wakfs, whoever he may be, whether a Hanafi or a Shia or a Sunni or a Shafei, will exclude them, and the Dawoodi Bora community need not have the least fear that justice will not be done to them. But I do think that it is casting an unjust suspicion upon Mussalmans as such when it is thought that because they do not happen to belong to a particular community they cannot have sufficient sympathy with that community, or that they cannot appreciate the sentiments of that community. I have not the least doubt that they are capable of appreciating such a sentiment. The amendment of Khan Bahadur Abdul Momin is absolutely useless and probably casts a slur upon the Commissioner of Wakfs and upon the Mussalmans in general.

Mr. NARENDRA KUMAR BASU: I am afraid I must also begin by saying that all the doubts that I might have had as to the wisdom of this amendment have been removed by the speech that I have just listened to. Mr. Suhrawardy says that by carrying this amendment the House will cast an unjust slur upon the Commissioner of Wakfs or the Minister of the future. Mr. Suhrawardy wants that the Dawoodi Boras should have more faith in the fairness and wisdom of an individual than in the collective wisdom of a legislative body. That I submit, Sir, is a point of view which I for one cannot endorse. We are the Legislative Council here. We are the repositories of all the fairness and wisdom of this province: Why should we abdicate in favour of anybody who is yet unborn, legally speaking? Then, again, the other voice of opposition that we have heard is from Maulvi Abul Kasem. I do not know whether it was real opposition or a sort of cheap sneer

that he permitted himself to indulge in at the expense of a small but respected section of the community, namely, the Dawoodi Bora community, of which community, however, I must say, I had no knowledge till this afternoon—cheap sneer because they are not Bengalis and because they are not orthodox Mussalmans according to this orthodox Mussalman Maulvi Abul Kasem.

Well, I have no knowledge of the tenets and practices of the Dawoodi Boras and I do not know in what way they are apart from the orthodox Mussalman faith. But I have been told within the precincts of this House that their customs and their tenets and their creeds are so different from the Hanafi creed that Hanafi Musalmans will not go to pray in their mosques. I have been further told that there is not a single Bengali among the Dawoodi Boras. I have also been assured of the further fact that the two *wakfs* they have got, one a mosque and the other a cemetery, do not fetch any income whatsoever, so that all their expenditure in connection with these two *wakfs* has to be met by people from outside Bengal and is not met out of those *wakfs* at all. That being so, Sir, I see absolutely no reason why members of other religions, I say this advisedly, be they Hindu, be they Christian, be they Jews, or be they Hanafi Mussalmans, why they should force this Act down the throats of the Dawoodi Boras. I submit, Sir, there is absolutely no reason for doing so. We are only the Bengal Legislative Council and we are not legislating for the whole of India and if these guests from outside Bengal have created some *wakfs* which do not yield any income but upon which they have to spend money in Bengal from outside, I submit that their *wakfs* ought certainly to be excluded from the operation of the Bill.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I have heard with patience the several speeches that have been delivered so far. All these speeches have reference to one particular matter and that is that the Dawoodi Bora community should be excluded on the ground that they are not Bengalis and that the dedications of their *wakfs* is made not to God but to their Mullaji. We have nothing to do really speaking, with dedication or with a person whether he is a Bengali or a non-Bengali. What we are to think of is the abstract principle and that is whether the *wakfs* that have been made as *wakfs* are being well-managed or ill-managed. The whole basis of this legislation is the idea that *wakfs* as a whole are not being managed properly. And so people say that it has become a scandal. There is no doubt that many public *wakfs* as well as the private *wakfs* are not being properly managed, and I submit that the time has come for Government to interfere and try to see that they are properly managed. That being the case, Sir, when the question involved is a general one and not particular in respect of either the Shias or Sunnis, or the Boras and the non-Boras, it stands to reason to see that the *wakfs* property are well managed.

The management of such property may be bad when it is done so by a Bora or a non-Bora. Our point should be to make some provision for the good management of *wakf* properties without any reference to any community or section of the people; we should really provide against any ill-managed or badly managed *wakf* property. That being the case, Sir, I do not understand why we should make any discrimination between "A," "B," "C," or "D," and so on. Our real duty should be to see whether the property is properly managed or not. I do not believe that we can make any distinction between one section of the people and another. The only thing that we can do is to provide that if things went wrong, some provision should be made in the Act so as to enable any aggrieved community or sect to come forward in the near or distant future either to the Government or to this Legislature with a petition saying that the trustees are not looking after the properties in as admirable a manner as they want. I cannot understand on what principle a man, say an Englishman, can come forward and say that as he belongs to such and such a community he ought to be excluded from the operation of the law of the land. So we are simply making this rule that anybody creating a *wakf* trust, making dedication under the Muhammadan law should not mismanage his property, but should manage it so well so as to satisfy all the parties concerned. The Legislature is simply providing a machinery so that mismanagement may not take place. I do not understand, Sir, how a particular community can come forward and say that they should be excluded. To-day one community has come forward with the request for being excluded; to-morrow another community may do the same thing. Here we are not thinking of any community in particular. What we are considering is the question of mismanagement of *wakf* property. Even an Englishman may create a *wakf* (MR. NARENDRA KUMAR BASU: "He cannot do it.") An Englishman if he so chooses can take advantage of the Muslim law. In that case, Sir, I think that we should provide against him also. In that view of the case I consider that we are creating a tempest in a teapot. (MR. NARENDRA KUMAR BASU: "He cannot forget his tea, and in general you cannot say that even here.") When providing against theft, because there is one thief, he must not be dealt with under the law? I reiterate that we should simply think of the punishment of wrong-doers and this is the only way we should think in the matter.

I think, Sir, that there is absolutely no justification for this amendment being passed.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I am afraid that the debate has taken such a turn, that the tide is now turning to the other side. Sir, it has been forgotten that the scope of the Bill is for the proper administration of *wakf* property in Bengal, and certainly, Sir, if

we are convinced that there is maladministration of *wakf* properties in this province I for one would be prepared to go into the question whether it relates to the Bora or non-Bora communities as my friend Nawab Musharruf Hosain has chosen to style it. But frankly speaking —I had been a member of the Select Committee—I must say that up till now unfortunately we have no evidence on the point as to how *wakf* properties are being administered. I may put it altogether out of the question for the time being. I am now taking my stand on other grounds. I will not go into the problem as to whether it is correct or not. What I want to submit, Sir, is that the Dawoodi Bora community is guided by certain principles which are recognised in British courts by virtue of the customs which are prevalent in that community. And that being the case, if Muslim laws are administered in other ways, it will entail great hardship on such communities. Sir, the question of principle does not arise in this case. We feel that when necessity arises to deal with particular questions, it may be dealt with in a particular way. It is only proper that we should find out some way for excluding the Dawoodi Bora community in view of their peculiar custom. In this case it is not a law in the ordinary sense of the term but it is a law of nature. This is a law which envisages interference whether *wakf* properties should be properly administered or not. And if no case has been made out with reference to a particular community as regards the maladministration of a *wakf* property, then surely that community should be excluded from the purview of the present Bill.

Sir, I take it that we are discussing this piece of legislation as members of this House, and I find that my Hindu friends and Muhammadans are taking equal and keen interest in the matter. It appears that this is a question in which all the communities are interested. Had it been a matter for the Muslims only, I could have quoted hundreds of cases in support of my argument. For instance to take the point that the Hanafis will be affected I beg to point out that it is not the case. We the Mussalmans, stand as one community, and there is no difference of opinion so far as religious matters are concerned. It is immaterial whether I, or for the matter of that any other Mussalman, belong to any particular sect or community. Up till now no case has been made out that the Dawoodi Bora community should be excluded excepting the one point which has been made out by Mr. Rahman, namely, the case of those who want to be excluded. Sir, we have ample evidence that in many cases *wakf* properties are maladministered and mismanaged. It is, on these grounds, that I support the amendment.

Maulvi ABUL QUASEM: Mr. President, Sir, I find that on this particular question many speeches have been delivered. I have listened very carefully to the speeches which have been delivered by the

hon'ble mover of the amendment. At the very outset, Sir, I desire to say that I am strongly opposed to this amendment. I have not heard one single solid argument which can convince me. Sir, we have been told that the Dawoodi Bora community are full of apprehensions regarding their *wakfs* in Bengal. Sir, I will show presently that their apprehensions are unfounded. I have in my hand a copy of the memorial purporting to be addressed to the Hon'ble Minister in charge of this question. Sir, in paragraph 13 of that memorial——

Mr. PRESIDENT: Is the memorial authenticated?

Maulvi ABUL QUASEM: I cannot say whether it is authenticated or not, but it has been circulated to all the members of this House.

Mr. PRESIDENT: I am afraid you cannot quote any extract from it.

Maulvi ABUL QUASEM: As I have already said, Sir, every member of this House is in possession of this memorial.

Mr. PRESIDENT: I cannot allow you to quote from it, but you may base your case on relevant facts in it without reading out or mentioning the memorial.

Maulvi ABUL QUASEM: Sir, I rise to oppose the amendment moved by Khan Bahadur Abdul Momin. Sir, I received by post a printed copy of a memorial addressed to the Hon'ble Minister for Education, in which the case of the Dawoodi Bora community for exemption from the operation of the present Bill is set out. In paragraph 13 of that memorial it is stated that the Dawoodi Boras have only two *wakf* properties in Bengal—one being a burial-ground and the other a mosque. There are no endowments for the maintenance and upkeep of these *wakfs* and the expenses are met by certain individuals. So, Sir, on their own showing, there is no particular thing in connection with these *wakfs* which could be scrutinised by the authorities under this Bill. And then, Sir, what is this Bill seeking to do? I would refer the House to proposed section 25 of the Bill which reads as follows: "The Commissioner and the Board, in exercising their powers under this Act in respect of any *wakf*, shall act in conformity with the directions of the *wakif*, the purposes of the *wakf* and any usage or custom of the

wakf sanctioned by the Mussalman Law." Thus, it is stated in clear terms that the directions of the *wakif* will be respected. Sir, I am clearly of opinion that the community have absolutely no ground for apprehension and that they have no case for being excluded from the operations of this measure which is going to be enacted.

Sir, there is a further point which has been raised by some members. Sir, I speak with great respect for the community and their beliefs, so that my remarks may not be taken as casting any reflection on them. According to the belief of this particular community their religious head—Mullaji—is the custodian of all their religious affairs, including *wakfs* and endowments. Well, Sir, all *wakf* properties of this community is said to vest in him as representative of God. According to Muslim law, all *wakf* properties vest in God as owner. In theory God is the owner and proprietor of every *wakf*. The *mutwalli* is the mere manager; he has only the power of superintendence over the *wakf*, so in this respect there is little difference between this community and the rest of the Muslim world. Why are the members of this community objecting to this measure which is only seeking to make provision for the proper administration of *wakf* property? We have been told many things by Khan Bahadur Momin about this community, but not things which are really essential and relevant for a proper consideration of the issues raised. We are told that Mullaji is the custodian and guardian of all *wakfs*. We have no information as to how Mullaji acts, and how he exercises his control and supervision over these *wakfs* and whether he exercises any effective supervision also. What this Bill seeks to do is to ensure that every *mutwalli* in charge of a *wakf* shall be under the direction of the Wakf Board and the Commissioner; so this Bill is seeking really to further the interests of the community. If there is a *wakf* and if the *mutwalli* is not managing it properly, then an application may be made to the Commissioner to see that the *wakf* is properly managed, and that the income is properly applied, so that it would appear that this Bill is not in any way antagonistic to the community, but is really in their best interests. I repeat, Sir, that this Bill is seeking to do nothing but to safeguard the interests and objects of all *wakfs* by whatever community they may be created. Khan Bahadur Momin, the mover of this amendment, has said that the Dawoodi Bora community predominates in Bombay and the Central Provinces. In 1923, we have been told, when the Mussalman Wakf Act was passing through the Imperial Legislature that there was a determined attempt made by this community to have itself excluded from the operations of that Act, but nothing was done by that Legislature, beyond a provision being inserted in the Act, that if the Provincial Governments thought fit, they might exclude any particular community from the operation of the Act. In Bombay where their number is the largest, and their influence the strongest, they have not been

able to get their community permanently excluded from the operation of that Act. In Calcutta, where their number is so small, we are told about 300 in all, we have this amendment moved on their behalf, asking for their entire exclusion from this Act, for no other reason save sentiment. Then, it has been said that since the Mullaji is the representative of God and owner of all *wakfs*, no earthly power can seek to interfere with his absolute discretion. I do not see where the interference comes in. In the memorial already referred to, it is stated that in a Bombay case Chief Justice Marten declared that so far as control and supervision were concerned the provisions of the Civil Procedure Code were quite enough to bring to book any offending *mutwalli* of the Dawoodi Bora community. So, Sir, sections 92 and 93 of the Code applies to the community. When, admittedly, an Act of the Imperial Legislature can deal with an offending *mutwalli* of the community, then why should not an Act of the Bengal Legislature deal with *wakfs* of this community in Bengal for the benefit of the *wakfs* themselves? It cannot be said that these *wakfs* are beyond human control. I am emphatic in my view that control should be exercised by virtue of this legislation. I think no irrelevant considerations ought to be allowed to influence our decision in this matter. There is absolutely no ground for apprehension of any interference with the management of any permanent endowment for the simple reason that there is no such endowment. What about the future? asks Khan Bahadur Abdul Momin. I reply that, if in the course of centuries the community has got only two *wakfs* in Bengal— one a mosque where they worship God and the other a burial-ground where they find their last resting place— and that if the community has not cared to create any permanent endowment for their upkeep and maintenance but on the contrary has allowed the two *wakfs* to depend for their existence on the fitful and uncertain charity of individuals, then, Sir, I reply that the future may very well be left to take care of itself and we need not feel the least anxiety for it. I oppose the amendment.

Mr. H. R. WILKINSON: I rise merely to indicate the attitude of Government in this matter. Government would have preferred to leave the question of exemption of any *wakf* to the authorities to whom discretion is to be given under clause 3. They propose, however, to leave the decision entirely to the members of the House.

Mr. SHANTI SHEKHARESWAR RAY: I should thank Khan Bahadur M. A. Momin for bringing up the case of the Dawoodi Bora community before the House. A measure like this must be looked upon with misgiving by many of us. So far as this particular amendment is concerned, I think it should have the support and sympathy of all religious-minded people. Those who are opposed to the amendment

have failed to grasp the real cause of opposition to the inclusion of the Dawoodi Bora community in the Bill. They oppose on religious grounds, and I think it is in the fitness of things that we should respect that religious feeling. If it is left only to the vote of the majority among the Mussalmans here, I think they will have no chance, but this measure is not to be decided by the vote of Mussalmans alone. We Hindus and other are expected to have a say in this matter and our clear duty is to give our support to the demand of the minority section among the Mussalmans in this matter. Such a legislation should be based solely on the demand of the community concerned and Government ought to lend support only to a demand that comes unanimously. But in this case as a voice has been raised against the inclusion of the Dawoodi Bora community and it is not challenged by anybody here on behalf of that community, I think that that demand is unanimous. As there is no question of maladministration, as there is no question of a demand from the Dawoodi Bora community and, moreover, as the opposition is based on religious belief and on religious grounds, I think our duty in the matter is clear, that is, to accept the amendment put by Khan Bahadur M. A. Momin.

Maulvi ABDUS SAMAD: I rise to support the amendment of Khan Bahadur M. A. Momin. The hon'ble members who have opposed the amendment have lost sight of one thing, namely, that nobody, either the hon'ble mover of the Bill or any of the members had any idea whatsoever that this Act was intended to be applicable to a community known as the Dawoodi Bora community. Nobody has any idea that they have got any *wakf* and that there is any property endowed for the maintenance of that community. This Bill was primarily intended to be applicable to the Mussalmans of Bengal, Shias and Sunnis, and not to the Dawoodi Bora community, whose number is very small, about 300 all told. Now, but for this memorial which the leaders of this community sent to the Member, we would not have known that the Bill would affect that body. I support this amendment on the ground in the first place that the original intention of the framers of the Bill was not to include this community, and secondly because the members of the community are governed by laws which are quite different from ours. How do we know that it does not interfere with their religious tenets? They recognise one Mulla Sahib as the representative of God on earth which is fundamentally opposed to our religious views, and we know there are in Bombay many Moslem communities who are governed in the matter of succession by the Hindu law. On these and other grounds they, the Dawoodi Bora community, want to be excluded from the operation of this Act, and they want that it should be specially provided that the provisions of this Bill will not be applicable to them.

This will be perfectly in consequence with the principles laid down in the Hindu Wills Act, the provisions of which are applicable only to Hindus governed by *Daibhag* and not to those governed by *Mithakhora* except in respect of self-acquired properties. It would be very unjust and very unfair if they the Bora community be compelled to submit to the provisions of this law. My friend Mr. Abul Quasem has said that as they have no endowed property for the maintenance of the *wakf*, they have nothing to fear. There would be too much interference. Now, on that very ground I think they should be exempted from the operations of this Act, because they may be harassed by the future Board or the Commissioners. There are two *wakfs*, the mosque and the cemetry, and they may be called upon to submit accounts in connection with their maintenance and upkeep. I support the amendment.

Khan Bahadur Muhammad Abdul Momin's motion was then put in the following amended form:—

"Provided that this Act shall not apply to any *wakf* created by the Dawoodi Bora community."

A division was taken with the following result:—

AYES.

Afzal, Nawabzada Khwaja, Muhammad, Khan Bahadur.
Ali, Maulvi Hassan.
Bai, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Banerji, Mr. P.
Barman, Babu Premhari.
Barma, Rai Sahib Panchanan.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Khan Bahadur Maulvi Hafizur Rahman.
Chaudhuri, Dr. Jogendra Chandra.
Chaudhuri, Babu Kishori Mohan.
Das, Rai Bahadur Kamini Kumar.
Guha, Babu Profulla Kumar.
Haque, Khan Bahadur Maulvi Azizul.
Haque, Kazi Emdadul.
Karim, Maulvi Abdul.
Law, Mr. Surendra Nath.
Maiti, Mr. R.
Mitra, Babu Sarat Chandra.
Momin, Khan Bahadur Muhammad Abdul.
Nag, Reverend B. A.
Rahaman, Mr. A.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Mr. K. C.
Ray, Chowdhury, Babu Satish Chandra.
Roy, Babu Jitendra Nath.
Roy, Mr. Sarat Kumar.
Roy, Chaudhuri, Babu Nem Chandra.
Sabana, Babu Satya Kinkar.
Samad, Maulvi Abdus.
Sarkar, Rai Bahadur Rebati Mohan.
Sen Gupta, Dr. Naresh Chandra.
Sulaiman, Maulvi Muhammad.

NOES.

Ali, Maulvi Syed Nawshar.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhury, Maulvi Abdul Ghani.
Chowdhury, Haji Badi Ahmed.
Chaudhury, Maulvi Nurul Anwar.
Dutt, Rai Bahadur Dr. Haridhan.
Banerji, Maulvi Nur Rahman Khan.
Hussain, Nawab Musharraf, Khan Bahadur.
Hussain, Maulvi Muhammad.
Khan, Maulvi Tamizuddin.
Mallick, Mr. Gobinda Behary.
Quasem, Maulvi Abul.

Rahman, Mr. A. F.	Rast, Babu Hemal.
Rahman, Mr. A. F. M. Abdur-.	Sadaullah, Maulvi Muhammad.
Rahman, Maulvi Aziz-ur.	Shah, Maulvi Abdul Hamid.
Ray, Babu Amiyabhas.	Sohrawardy, Mr. H. S.

The Ayes being 36 and the Noes 20, the amendment was carried.

The motion that clause 2 as amended stand part of the Bill was then put and agreed to.

Clause 3.

Dr. NARESH CHANDRA SEN GUPTA: I beg to move that clause 3 be omitted.

My reasons for moving this amendment I have already set out in my note of dissent. I may say at once that I do not believe in the legislature passing a law by which certain things are to be done, because the legislature thinks that those things are necessary in the public interest and then giving the power to a body to nullify the decision of the legislature. That is exactly what will be done by clause 3. It says that the Board may with the previous sanction of the Local Government exempt any *wakf* from all or any of the provisions of this Act. I should have thought that if there were classes of *wakfs* which ought on principle to be excluded from the operation of the Bill, if there were any principles on which they would be excluded, then they should have been embodied in the Bill itself, but instead of that we are leaving a loophole, we are giving the power to the Board with the previous sanction of the Government to exclude a particular *wakf* or any class of *wakfs* from the operation of all or any of the provisions of this Bill. We do not even go far as to lay down any principle on which the Board has to exercise this power. Supposing the Board thinks that it will exclude a particular *wakf* because the *mutwalli* of the *wakf* is X Y Z. There is nothing in the Bill to prevent the Board from doing that. No doubt the previous sanction of the Local Government will have to be obtained, but the Local Government will not be absolutely immune from influences, and least of all when we have a popular Government. Every student of constitutions is well aware that in popular constitutions the scope for outside influence increases in direct proportion to the largeness of the popular element in it. Therefore, with my eyes on the future particularly, I cannot accept this position that we solemnly pass a law and leave it to the Government to decide to exclude anybody from the operations of the law capriciously. I say that advisedly, because in the Bengal Tenancy Act, for instance, we find that on the question of enhancement of rent certain principles are laid down according to which the Courts are to

act in exercising their discretion, but here the discretion is left absolutely unfettered. The result will be that persons who can exercise influence may easily get their *wakfs* excluded irrespective of the fact that their *wakfs* may be the most valuable or may be very mismanaged, and irrespective of every other consideration, by reason of the influence which they are capable of exercising. For this reason I think, and more on the ground of principle than on anything else, that in legislating on matters relating to public interest, the less we leave to the unfettered discretion of individuals, and least of all of a bureaucracy, the better.

Maulvi SYED NAUSHER ALI: Sir, I wholeheartedly support the amendment of Dr. Sen Gupta. If this power of exemption is given to Government, Government will be inclined to follow the same principle on every occasion. It may be that to-morrow a community will come forward and say:—We are a small community coming from Bombay. We have got two or three *wakfs* in Bengal and we have got a *mollaji* similar to the *mollaji* of the Dawoodi Bora community and, therefore, our *wakfs* also should be excluded from the operation of this Bill. A thousand other applicants will also come forward in the similar way, and, as has been observed by the mover of the amendment, perhaps influence will be brought to bear upon the Hon'ble Minister in charge of this department, and he may be compelled to make a concession perhaps for his own safety in this Council. I can give instances where just on this very principle on which the Bora community has been exempted other communities also may be equally exempted from the operations of this Bill. Sir, one of the grounds for the exclusion of the Bora community was that their religion was for all practical purposes different from the religion of the ordinary Musalman, if I may use that expression. I have got in my district a class of Muhammadans who call themselves *Bhagwan* Musalmans. They have certain *wakfs* in Bengal and it is quite possible for them to ask that the Legislature should grant them exemption on the very grounds on which they have granted exemption to the Bora community. Since such a principle has been laid down in the Bill, that principle will be followed by Government on every occasion; and no one can blame them if they do so, for they will say that it is a principle which has been enunciated by this very Council. Now, Sir, the most cogent ground for omitting this clause is that here we are going to pass an Act and are considering a Bill; and if this clause is enacted into law, it will certainly be giving a blank cheque to the Government of Bengal which, I, for one, am not willing to give. I am also of opinion that if this power is given, the very object of this legislation will be frustrated, and it is for this reason that I think that this clause should be omitted. It may be said, Sir, that this is a new enactment—as has

been observed by even some of the supporters of the Bill—and as such it encroaches upon the vested rights of individuals—in some cases adversely and in some cases favourably. It is a new Bill and to some extent a new measure too, so far as the province of Bengal is concerned. So it may be that this Act will be found imperfect and difficult of application; it may also be that in the course of two or three months it may be found to be almost unworkable in certain respects. But we, the Legislative Council, are here and an amending Bill may be brought forward as has been done very often. We have seen in this very Council how an Act passed in one session has been amended in the next session in order to rectify and remove some of its defects. The same procedure may be adopted in the case of this very Act also, if necessity arises. I, therefore, for one, am not in favour of giving a blank cheque to the Government of Bengal, and I think the whole House should consider very carefully whether this unlimited and absolute power should be given to the Government; or, in other words, whether this Legislature should abdicate in favour of the executive, which goes to the very root of the principle of legislation itself. Now, Sir, as has been observed by Dr. Sen Gupta, if there had been any principle of exclusion——

(At this stage the Council was adjourned for 15 minutes.)

(After adjournment.)

I have practically finished, Sir, but I only want to add that if there had been certain principles stated we could have accepted the clause with certain principles added to the Bill. But as there is no such principle of exclusion whatsoever, I for one cannot support a clause like this. I have already stated that there may be difficulties in the administration of this Act, but in the meantime, after this Bill is passed and those difficulties are found out, certain principles may be enunciated and an amending Bill may be brought forward at a subsequent session of the Council with a view to remedy the defects, if any. With these words I wholeheartedly support the amendment of Dr. Sen Gupta.

Rai Bahadur Dr. HARIDHAN DUTT: Sir, a similar amendment has been tabled by me, so I take this opportunity of giving my wholehearted support to the amendment moved by my friend, Dr. Naresh Chandra Sen Gupta. Sir, before I say the few words which I have to say on this question, I must congratulate the mover of the Bill and the Muhammadan community upon the great work which has been taken up for them. Personally, I feel that control over these institutions known as *wakf* properties will go very far to improving the

position of the community concerned. I sincerely wish that somebody here on behalf of my community took up this matter in regard to similar institutions connected with the Hindu community, but that is a different question. I wholeheartedly support the principle of the Bill and I shall be very sorry if by any adverse movement the benefit of this Bill be lessened or minimised or reduced. I am very glad to find that all *wakfs* have been included within this Bill—at least that was the purpose of the Bill until 10 or 15 minutes ago, when some members of this Council thought it desirable to exclude a particular community of Muhammadans from the operation of this Bill.

We are interested in calling them Muhammadans: I think the Muslims and the Muhammadans are the same. Apart from that fact, Sir, I personally feel that the scope of the Bill ought to be extended as much as practicable and possible. With that end in view I have tabled this amendment, namely, that clause 3 should be omitted. There are some points which are in my favour. Only a few minutes ago I heard Mr. Suhrawardy say that all institutions which are insignificant should be excluded I think that is not desirable. So the powers to exclude any *wakf* should be done away with and they are included in the Bill the treatment which has been meted out to the Bora community would not be possible.

Sir, I am inclined to do away with the clause altogether so that any possibility of any future consideration for any community like the Bora community may be given I really cannot make out, what right the Bora community has to utilise the benefit of the *wakfs*, because it is small in number.

Then, Sir, I have with me a piece of paper which shows that there is already a move to exclude the Mohsin Fund of Hooghly. That is not an insignificant fund. These are the reasons which have actuated me to settle all doubts and difficulties by laying down that any *wakf* property which is for the benefit of the community at large ought to come under the purview of this Bill instead of being left to the sweet will and mercy of any other body. Then again, Sir, the whole initiative to secure proper administration of the funds of the *wakfs* come from the Local Government. That is, the sanction of the Local Government will be required to take necessary steps. It may be that the Hon'ble Minister representing the Government may be interested in a particular *wakf* property. Well, Sir, men are human beings and it may be that the Hon'ble Minister may err. The Hon'ble Minister no doubt will exercise his influence for improvement of *wakfs* but he may not be able to come up to expectation. That is one of my reasons for suggesting that the best course would be to delete this clause 3 altogether leaving the Bill to be effective in case of all *wakfs*. Apart

from all that, I am voicing the sentiments which have already bee expressed by some of the previous speakers. With these words I wholeheartedly support the amendment of Dr. Naresh Chandra Sen Gupta.

Mr. H. S. SUHRAWARDY: Mr. President, Sir, I endorse the observations of Maulvi Nausher Ali and I shall give my reasons *seriatim*. In the first place I do not wish to embarrass the Commissioner of Wakfs and the Hon'ble Minister with applications for exemption which will be made to him from time to time and which he will have the greatest amount of adjudging. My second reason is that the Council has already expressed, by accepting the last resolution, its want of confidence in the sense of justice of the Commissioner of Wakfs and possibly of the Government. It is suggested that he will not be able to do justice to the Dawoodi Bora community because they are in an insignificant minority. I think that we shall be stultifying ourselves if after having passed the aforesaid amendment we pass the present one. My third reason is that the Standing Orders do not permit me to move a short notice amendment to exclude, as I should like to exclude, the following sects:—the Aghakhani Khojas, the Ismaili Khojas, the Sunni Khojas, the Sunni Boras, the Cutchi Memons, the Halai Memons, the Surtis, the Asna, Ashari Shiahs, the Hanbali Sunnis, Maliki Sunnis, the Shafei Sunnis, the Hanafi Sunnis, the Pirottar properties, the Pirasthians, the Khangahs, the Magbarahs, the Sajjadanashins, the Mududmash Waqfs, the *waqfs-al-al-aulad*, the mosques and the *imambarahs*. As I am unable to give notice to exclude any of these categories, I think the proper course would be to delete the third clause altogether.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, I rise to support this amendment. The reasons for this proposal of mine has just now been explained by my learned friend, Mr. Suhrawardy. He has pointedly said that after having seen Government supporting the exclusion of one community, although they said that they are not for the exclusion by not voting for the motion they have led us to believe that they are bent upon excluding many *wakfs*. There is one *wakf* already on the agenda paper, and it is under the Board of Revenue. Suppose they say that those *wakfs* which are under the court of wards ought to be excluded and they may think of excluding all *wakfs* under the administration of the court of wards. Sir, if that is the case then what is the good of having a legislation like this. All will be excluded on this pretence or that pretence. Then, Sir, what is the utility of these debates and discussions? So I should like pointedly to ask the Hon'ble Minister in charge of the department, when I see that he

abstained from voting on the amendment that was before the House for the exclusion of the Bora community and when I further see that he has put in another amendment for the purpose of excluding all those *wakfs* under the management of the court of wards, what does he mean by asking us to swallow clause 3 *in toto*? I want to ask whether he really intends to carry this Bill through this Council and have it enacted into law. We do not want to give any loopholes to him. We are very serious about that. When the country wants a Bill like this, I do not understand why such loopholes should be allowed to remain. So, Sir, I strongly support the amendment of Dr. Naresh Chandra Sen Gupta.

Maulvi ABDUL GHANI CHOWDHURY: Sir, I wholeheartedly support the amendment moved by Dr. Sen Gupta, the learned Doctor of Law. To my mind, this clause, if retained, will enable the executive to frustrate the legislation. It is a matter of common knowledge that there are *wakfs* in which the Government itself is accountable. If the power under this clause is exercised, the Government may escape. I need not be very specific on this example. In that case very large stakes will be outside the control of the Board. I hope the House will seriously consider this clause. Do you, Sir, want to see all your labours wasted and frustrated by a stroke of the pen under this clause. By retaining this clause, Sir, you are fixing up a dynamite in the edifice that you have been erecting during these long 24 months.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, Dr. Naresh Chandra Sen Gupta has been very helpful in the Select Committee as far as this Bill is concerned. But I must admit that as far as this amendment is concerned if this proposal is accepted it will do the Bill a great deal of harm. Sir, this question was discussed in the Select Committee and it was accepted by a large majority of votes and I am surprised to see that the mover of the Bill has thought it fit to accept the amendment. I would like this House to consider seriously the implications of the omission of this clause. I consider this clause very important for this Bill and it has not been put in a lighthearted manner. The members of this House will remember that Sir Zahid Suhrawardy Committee recommended that all *wakfs* with an income of Rs. 500 should be excluded, and naturally we would have accepted that proposal, but for the fact that there a large number of opinions both from the Judges as well as from the associations against the exclusion of any *wakfs* on the basis of income, that is to say, Rs. 500 or whatever may be the income. Their opinions were definitely against it. There may be *wakfs* with an income of Rs. 500 only, but the provision for charity and allowances may be only Rs. 100; and there may be

wakfs with an income of Rs. 100 only where after paying all the absolutely necessary expenses, for instance, pay of the *imam* and salaries of the staff, there may be nothing left; and a levy on that *wakf* for the auditing of accounts of every year will make it impossible to make the two ends meet. There are other practical difficulties if we omit this clause. As has been said, we have no idea of the *wakfs* in Bengal. It is possible and it is certain, as every one in this House knows, that there are *wakfs* with an income of Rs. 10, Rs. 40 or Rs. 50. If you do not allow any discretion for the exemption of these *wakfs* from the operations of this Act, then you will make the whole Bill absolutely useless. These small *wakfs* have certain duties imposed upon them chiefly keeping mosques in repair and paying the salary of the *imams*. There are others which require *chiraghs* for *dargas* and shrines. Under this clause it will be possible to exempt them from levy but the Commissioner of Wakfs can compel the *mutwalli* to perform the duties imposed on him. Sir, this principle that we are pressing here has already been accepted. In the previous Acts also, for example, the old Bengal Municipal Act under section 106 gave absolute authority to the municipal board to exempt the taxes of any ratepayers on the ground of poverty. There was a blank cheque given. Take for instance, the Madras Act. There also a similar provision has been made under which the Local Government may after consulting the board exempt any such endowment from the operation of any provision of the Act. They may also alter or cancel such exemption. Therefore the whole scheme of this Bill will be upset if this clause is omitted. There are many *wakfs* which are managed by committees of responsible men and about whose affairs we are certain that the accounts are properly kept and properly managed. Now it is possible that these *wakfs* may be exempted from annual audit. If these accounts are audited every 3 years it will be sufficient. We do not want to make these *wakfs* spend money when it is not necessary. One of the major expenses that the *wakf* will have to incur is the expenses on audit, and if we reduce the number of audits then so much money will be saved and it may reduce the percentage of the levy. If you exclude this provision from the Bill then it will mean that you are absolutely going to make the Act rigid and stereotyped. Here we are experimenting with this Bill on a question which has had no precedent before and we do not know how the whole thing is going to work. It is absolutely necessary to make the Bill flexible and not to make it too rigid. The members must bear in mind that we can always amend the Act if difficulties arise in working it, but I see no reason why we should delay the passing of this Bill. Nothing should be done that will delay the enforcement of the Act and I submit that if this clause be omitted it is practically certain that you delay the operation of the Bill. It will be fatal to the Act. There are many practical difficulties that will arise. I have cited some of these practical difficulties. We do not

know what will be the result of the working of this Act. After all what does this mean? I ask the House seriously to consider that. By the time we give full assent to the Act and the working of it is in operation, this Council will have provincial autonomy, and do you assume that when you are going to have provincial autonomy your responsible Minister cannot be relied upon? They can be subject to canvassing and not only to canvassing but be guilty of glaring injustice, namely, that *wakfs* with large incomes will be exempted whereas *wakfs* with no income will be taxed. Can you conceive of such thing? If you accept this maxim then you cannot have democratic responsible government in this province.

Mr. H. S. SUHRAWARDY: We have no confidence in you.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: The Government left it to the members and it is the action of the members of the House. I am surprised that 5 minutes ago a member got up and said that "we do not want to give exemption because there is clause 3——

Mr. H. S. SUHRAWARDY: It is not the action of the Board, but it is the action of the Legislative Council who vote a censure on Government for accepting this amendment.

Mr. PRESIDENT: How do you arrive at that?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Before I sit down I would point out one glaring mistake which the Nawab Sahib has made. He has referred to the *wakfs* under the court of wards. This is a thing which is impossible. If the Nawab Sahib only had read the amendments that have been proposed, he could have found that our friend, Haji Badi Chowdhury, has got an amendment asking to legalise the *wakf* estates under the court of wards——

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I have never said that an attempt is being made to include the *wakfs* under the court of wards.

Mr. PRESIDENT: I quite understand you.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I have never said that Hon'ble Minister——

Mr. PRESIDENT: You cannot make another speech; you have already spoken on the amendment now before the House.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I accept the explanation of the Nawab Sahib, but I think the Nawab Sahib should have confidence in this House. It is not possible to accept the amendment allowing the court of wards to have *wakf* estates under them. Therefore, the provision should not exist. Then, again I have already explained that this is very necessary because there are large number of *wakfs* and we are contemplating whether it may be in the interest of the *wakfs* or the *mutwalis* or the beneficieries to exemptions and it will be fatal if we accept the amendment moved by Dr. Sen Gupta.

Mr. NARENDRA KUMAR BASU: I beg to rise to support the amendment moved by Dr. Sen Gupta, and I do so, Sir, having regard to the best interest of the *wakf* properties. I am afraid the Minister of *wakfs* in the future constitution will not be so happily placed as the present Minister under the present constitution. Even now, Sir, we are not ignorant of personal influences that are being brought to bear upon the unhappy Minister in charge by responsible persons and men in the Council. Under the reformed constitution there will be at least 119 Mussalman members and if each of them desires to have, say, 3 *wakfs* exempted from the operation of the Act, the position of the hapless Minister will be hopeless. Therefore, I submit that to leave this particular power in the hands of the so-called popular Minister in the next constitution is really to reject the Bill altogether. Unfortunately, Sir, we are not ignorant of the fact that highly influential individuals may either be beneficiaries or *mutwalis* of these *wakfs*. It may be not unknown also to the members of the House that some of these *wakfs* are not administered as well as they ought to be and, Sir, one knows in this Council and outside what an amount of opposition the introduction of this Bill has evoked from certain sections of the Mussalman population in the province. Therefore, I submit, that it would be absolutely unwise in the interests of the Minister of the future to leave this clause in the Bill. That is, Sir, the point of view of practical politics. Then of course the wording of the clause, as it stands, that at the recommendation of the Board, that is to say, the Board consisting mostly of non-officials and with the approval of the Local Government, which will certainly be in the hands of Minister in charge of the department, that the Board shall have the power, "with the previous sanction of the Local Government," that is to say, the initiative in many cases, will be by the Local Government, which for the purposes of the Act shall be a particular Minister, that is to say with the sanction of the Hon'ble Minister previously obtained by the Board. I say, Sir, that in addition to that particular question of

principle the practical result of the adoption of this clause in the statute book will be to make the Act, as passed by the legislature, nugatory; and nugatory in cases probably where the provisions of the Act are most wanted.

Maulvi ABDUS SAMAD: Sir, I rise to oppose this amendment, because if accepted, it will create a situation which will produce great hardships in cases of small *wakfs*, and on this point the Hon'ble Minister has dealt with at great length. The supporters of the amendment have proceeded on two assumptions. In the first place, the Hon'ble Minister will be gained over, and then after he is gained over he will try to influence the Board. It is inconceivable that such a contingency will ever arise. I think we should have some faith and confidence in the future Board which will consist of non-official members, otherwise the effect of this Act will be nugatory. Even assuming that in some cases the Hon'ble Minister does something wrong, that would be more than counterbalanced by the removal of inconvenience that will be created by the acceptance of this amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, there has been a good deal of feeling in favour of the deletion of this clause. Some of the arguments are certainly cogent, but I feel the other aspects of this Bill have not been fully gone into. Before I proceed further, may I inquire whether it will meet the wishes of the Hon'ble Minister, if, with the permission of the Chair, a short notice amendment is moved to the effect that "the Board may subject to the rules framed on this behalf and with the previous sanction of the Local Government." My intention is that the Board is to be guided by definite rules so that the public will have an opportunity of judging what the ultimate effect will be, and at the same time it will give a wide discretion to the Local Government.

Maulvi ABUL QUASEM: Sir, the amendment that has been moved by Dr. Naresh Chandra Sen Gupta was also given notice of by me. After having heard the Hon'ble Education Minister and after having considered the matter further since giving notice of this amendment I feel free to say that I am at one with Government in this matter. It is not for nothing that the Suhrawardy Committee proposed that *wakfs* yielding an income of less than Rs. 500 should be exempted from the operation of this Act. The difficulties in the way have been dealt with by the Hon'ble Minister. One of the most serious objections to this Bill even now is the provision for a levy. This goes directly against the wishes of the *wakifs* The Muslim community's principal

objection to the Bill is due to the fact that a levy is going to be imposed on all *wakfs*. That was of course not foreseen and provided by the *wakifs*. We feel that some provision has become imperative to control dishonest and negligent *mutwallis*. If this power is not given to the Board to exempt certain *wakfs* in respect of any or all provisions of this Bill, it will cause great hardship to many *wakfs* with small incomes in the *mufassal*. If you do not give power to the Board to exempt them, you will be simply subjecting them to unbearable hardship. That is why I am in favour of leaving this power in the hands of the Board and the Government, and I must oppose the amendment moved by Dr. Naresh Chandra Sen Gupta.

Adjournment.

The Council was then adjourned till 3 p.m. on Tuesday, the 20th February, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Tuesday, the 20th February, 1934, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 91 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Curfew orders in Midnapore.

*75. **Mr. R. MAITI:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state whether any terrorist activities were ever noticed or any weapons or ammunition used for such purposes were ever recovered from any of the houses in the subdivisions of Contai, Tamluk and Ghatal in the district of Midnapore during the course of the last ten years?

(*b*) If the answer to (*a*) is in the negative, why has the curfew order restricting the movements of all Hindu *bhadralok* youths between the ages of 14 and 30 been recently proclaimed in the above places?

(*c*) Is the Hon'ble Member aware that owing to the promulgation of the curfew order the normal and legitimate activities of the ordinary public have been greatly hampered causing a serious loss of their income in these days of acute economic distress?

(*d*) Are the Government considering the desirability of immediately withholding the curfew order from the above localities?

MEMBER in charge of POLITICAL DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) Yes.

(*b*) Does not arise.

(*c*) No. Government are satisfied that the effect of the curfew orders is not such as to hamper the ordinary activities of the public or affect their earning power.

(*d*) No.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to state when such terrorist activities were noticed in this area?

The Hon'ble Mr. R. N. REID: For some time past, Sir.

Mr. SHANTI SHEKHARESWAR RAY: Has there been any terrorist outrage in this area lately?

The Hon'ble Mr. R. N. REID: Not lately.

Babu HEM CHANDRA ROY CHOUDHURI: With reference to (*a*), will the Hon'ble Member be pleased to state which portion of the question his reply refers to?

The Hon'ble Mr. R. N. REID: The answer applies to both parts of the question.

Mr. P. BANERJI: Can the Hon'ble Member cite any instances of outrage in the Contai subdivision of Midnapore?

The Hon'ble Mr. R. N. REID: Yes, Sir.

Recruitment to Bengal Medical Service.

*76. **Dr. AMULYA RATAN CHOSE:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to lay on the table a statement showing—

(*i*) the number of medical graduates in the Carmichael Medical College, Belgachia, who have been given appointments under this Government in the years 1930, 1931, 1932 and 1933, respectively; and

(*ii*) the names of those who have got such appointments during the years 1932 and 1933?

(*b*) Is it a fact that appointments in the Bengal Medical Service are given to those doctors who have not been in service but had been independent practitioners always?

(*c*) If the answer to (*b*) is in the affirmative, will the Hon'ble Minister be pleased to lay on the table a statement showing with the names and present designations,—

(*i*) the number of appointments made during the present ministry; and

(*ii*) the number of appointments made during the immediately preceding ministry?

(*d*) Will the Hon'ble Minister be pleased to lay on the table a statement showing for the years 1931, 1932 and 1933—

(*i*) how many appointments have been given to doctors who have had their medical education from such institutions as the National Medical Institute, the Calcutta Medical Institute, and the like Government recognised medical institutes but managed by private bodies;

(*ii*) names of medical men;

(*iii*) the name of the institution from where they had their education;

(*iv*) the district to which they belong;

(*v*) the present offices they hold; and

(*vi*) the year of their appointment under the Government of Bengal?

MINISTER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (*a*) (*i*) and (*ii*) A statement is laid on the table.

(*b*) No. Occasionally sub-assistant surgeons are appointed.

(*c*) Does not arise.

(*d*) There have been no appointments from such institutions.

Statement referred to in the reply to clauses (a) (i) and (ii) of starred question No. 76.

Number of medical graduates from the Carmichael Medical College given appointment in 1930 to 1933 and names of those given appointment in 1932-33.

(*i*) 1930	...	1
1931	...	1
1932	...	1
1933	...	Nil.

(*ii*) Dr. Sati Pati Goswami recruited in 1932.

Dr. AMULYA RATAN GHOSE: With reference to (*b*), whether the Professor of Clinics, Calcutta Medical College, is not a Bengal Medical Service man?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: No, he is an I. M. S. officer at present.

Babu SATISH CHANDRA RAY CHOWDHURY: With reference to (*d*), what is the reason why no recruitment was made from the institutions referred to in the question?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, recruitments are made according to the merits of candidates and not according to institutions.

Dr. AMULYA RATAN GHOSE: Is it to be understood that from all these instances candidates with required merits did not apply?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: There were better candidates from other institutions.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Treatment of cancer.

38. SETH HUNUMAN PROSAD PODDAR: (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to lay on the table a statement showing the number of deaths from cancer within the last five years—

(*i*) in Calcutta; and

(*ii*) in each of the different districts of Bengal?

(*b*) Will the Hon'ble Minister be pleased to state whether there is any place with adequate arrangement in Calcutta for the treatment of patients suffering from cancer?

(*c*) Is the Hon'ble Minister aware—

(*i*) that the treatment of cancer is costly; and

(*ii*) that the poorer sections of the public can hardly meet the expenses in this connection?

(*d*) If the answer to (*c*) is in the affirmative, will the Hon'ble Minister be pleased to state—

(*i*) whether any facilities are granted by the Government for the treatment of sufferers; and

(*ii*) whether the Government are considering the desirability of providing facilities for treatment of cancer in an adequate way, in this second city of the British Empire?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (a) The information is not available.

(b) and (d) The Medical College Hospitals and other hospitals in Calcutta provide, for cancer patients, adequate surgical treatment and also keep X-ray therapy. At the Presidency General Hospital there is available, for the treatment of cancer, a quantity of radium, presented by a grateful patient.

(c) (i) No, unless radium is used.

(ii) Does not arise.

LEGISLATIVE BUSINESS

NON-OFFICIAL BILLS

The Bengal Wakf Bill, 1933.

The debate on the Bengal Wakf Bill was resumed.

Clause 3.

Khan Bahadur Maulvi AZIZUL HAQUE: May I, with your permission, Sir, move the short notice amendment of yesterday? I understand from the Member in charge of the Bill that he will accept it.

Mr. PRESIDENT: Is it with regard to the amendment that was before the House yesterday, but was left out to effect a compromise between dissenting parties?

Khan Bahadur Maulvi AZIZUL HAQUE: Yes, Sir. I should like to insert after the words "Local Government" the words "and subject to rules made by the Local Government in this behalf." The reason is obvious. This will meet the objections raised in certain quarters, and it will give the Local Government power to promulgate rules.

Maulvi ABDUL GHANI CHOWDHURY: I have no objection. I am prepared to accept it.

The motion (moved the day before) that clause 3 be omitted was then put and lost.

The following motion was then put and agreed to:—

"That in clause 3 after the words 'Local Government' the words 'and subject to rules made by the Local Government in this behalf' be inserted."

The motion that clause 3, as amended by the Council, stand par of the Bill was put and agreed to.

New clause 3A.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I move that afte clause 3, the following clause be inserted, namely:—

"3A. The Local Government may, by notification in the *Calcutt Gazette*, exempt any *wakf* property, which has been retained unde the superintendence of the Board of Revenue in accordance with th provisions of section 21 of the Religious Endowments Act, 1863, fron all or any of the provisions of this Act, for so long as the property remains under such superintendence."

As far as this amendment is concerned, it affects only one or tw *wakfs* in the whole of Bengal and the reason is obvious. These *wakf* are being managed by the Board of Revenue and as far as their manage ment is concerned there can be no serious objection. Therefore, I an moving this amendment to exempt them from any of the provisions o this Act. It is obvious that if at any time the Board of Revenue give up control and management of any of these *wakfs* they will come unde the operation of this Bill.

The motion was put and agreed to.

Clause 4.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move tha before sub-clause (*1*) of clause 4, the following sub-clause be inserted namely:—

"(*a1*) 'beneficiary' used with reference to a *wakf-al-al-aulad* mean a *wakif*, any member of his family or descendants entitled to receiv any pecuniary or other material benefits from such *wakf*."

Sir, I do not think any explanation is necessary. It is quite clea from the wording of the amendment.

Maulvi ABUL QUASEM: May I draw the attention of the Hon'bl Minister to the language used in this amendment and that used i amendment No. 41 to be moved by him. There the language is "o any of his family or descendants." Here the language is "an member of his family or descendants." I should think "members' do not properly relate to descendants. If it means members only then it would not be quite in keeping with amendment No. 41.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I do not quite follow the objection. I think if there is any objection it can be made later on. But as far as this amendment is concerned, the wording is all right.

Khan Bahadur Maulvi AZIZUL HAQUE: What my friend Abul Quasem wanted to point out was that the language in both the amendments, although they relate to the same thing, does not coincide. What we want is some form of uniformity in statutory language.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I think No. 41 can be amended by the addition of the word "member" later on.

The motion was then put and agreed to.

Rai Bahadur Dr. HARIDHAN DUTT: I move that in clause 4 (5), in lines 4 to 6, the words "and includes a *naib-mutwalli* or other person appointed by a *mutwalli* to perform the duties of a *mutwalli*" be omitted.

Sir, I beg to draw the attention of my hon'ble friends who are interested in the working of the Wakf Bill that the usefulness of the Act will to a great extent be taken away if the *mutwalli* is allowed to appoint anybody he wants as *naib-mutwalli*. I can well understand a *mutwalli* being responsible for the working of the *wakf*. I can also understand a committee of persons exercising the same function, but I do not think that it is desirable that the *mutwalli* should appoint any non-descript person to be the *naib-mutwalli* and retire from his position of trust and responsibility although all the time enjoying the benefits of his position. With a view to improving the purpose of the Bill or rather with a view to restrict the *mutwalli's* powers, we should see that the *mutwalli* may not delegate his rights and functions to any and every body.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I think, with all due respect to the Rai Bahadur, he is under a misapprehension as regards this particular function of the *mutwalli*. It has been intentionally included because a *mutwalli* has already got the power under the *Shariat* to appoint a *naib-mutwalli*. This amendment, if accepted, will not prevent a *mutwalli* from appointing a *naib*. But under this Act we are trying to make the *naib-mutwalli* responsible for any dereliction of his duties when so appointed. For example, it is quite possible for a *mutwalli* to appoint a *naib-mutwalli* and then go away to England for a couple of years; in the meantime the *naib-mutwalli* may not discharge his responsibility properly and there is nothing to make him properly discharge his duties. If you look up some of the clauses you will find that fines and penalties are mostly personal on the *mutwalli*. So it is obvious that we have to

include this provision. By omitting this provision, we will not prevent the *mutwalli* from appointing a *naib-mutwalli*. If it were otherwise I would have been glad to accept Dr. Dutt's amendment. Under the Islamic law a *mutwalli* if he so desires or if it is so provided in the *wakifnama*, he can always appoint a *naib-mutwalli*. I hope I have made the point quite clear and I trust the amendment will be withdrawn.

The amendment was then by leave withdrawn.

Mr. H. R. WILKINSON: I move that after sub-clause (*5*) of clause 4, the following sub-clause be inserted, namely:—

"(*5a*) 'net available income' of a *wakf* means the income as determined, from time to time, in the manner prescribed by the Local Government."

Sir, it will be seen when we come to clause 54 that we have proposed to substitute "the net available income" for "gross income" for purposes of calculating the contribution and also we propose to use it as the basis for distinguishing the *wakf-al-al-aulad* from other *wakfs*.

The motion was put and agreed to.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that sub-clause (*7*) of clause 4 be omitted.

Sir, the reason is that we have substituted *wakf-al-al-aulad* in place of other *wakfs* throughout the Bill. Therefore, there is no necessity for defining private *wakfs* because that term will no longer be used in the Bill.

The motion was put and agreed to.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that after sub-clause (*9*) of clause 4 the following sub-clause be inserted, namely:—

"(*9a*) *wakf-al-al-aulad* means *wakf* under which not less than seventy-five *per cent.* of the net available income is payable to the *wakif* for himself or any of his family or descendants."

Sir, under the Islamic law the *wakfs* are classified under two names—the one is *wakf* "*Endillah*" and the other *wakf-al-al-aulad*. The former is for the purpose of public charity, whereas the latter is mainly for the purpose of providing for the members of the family of the *wakif*.

Sir, so far as the supervision and control are concerned, there is no difference between the two *wakfs*. Actually, so far as the Islamic law is concerned, the two *wakfs* are on the same footing. There is no difference whatsoever. It is only in the purpose for which the *wakfs* are created that you find any difference. In Bengal there are a large

number of *wakfs* which are mainly for the maintenance of the family members and descendants of the *wakif* in those *wakfs*. There is also provision for charities. There is a certain section of the Muhammadan community, however, who think that there should be a distinction drawn between these two kinds of *wakf*. Therefore, recognising this demand, we have tried to make a distinction between two kinds of *wakf* both as regards control and supervision. I shall explain more fully later on when we come to those portions as to why we have made this differentiation. No useful purpose will be served at this stage to go into that question. Therefore, in the definition we have only defined *wakf-al-al-aulad*. I think the House should accept this amendment subject to the suggestion made by Maulvi Abul Quasem and Khan Bahadur Maulvi Azizul Haque that instead of "any of his family" the wording should be "any member of his family." But this can be moved as a separate amendment.

Mr. PRESIDENT: Yes, the change may be effected by a separate amendment.

Maulvi ABDUL GHANI CHOWDHURY: Sir, of the amendments proposed, the most important ones are based on the recognition of the distinction between *wakfs* and *wakf-al-al-aulad* and are projected to safeguard the latter against the operation of this legislation. I feel however, Sir, very strongly on this point. The amendment moved in opposition to amendment No. 41 proposed to draw an operating line between *wakf-al-al-aulad* and other *wakfs* which is inconsistent with and contrary to the spirit and policy and also the history of the law of *wakf*.

Here I beg leave of you, Sir, to recall the history of the Wakf Validating Act, VI of 1913. The decision in the case of Abul Fata *versus* Rasamay Dhar Chowdhury, reported in 22 I.A. at page 76, raised a stormy agitation in Muslim India. Mr. Ameer Ali led the opposition and Lord Stanley of Alderly made himself the English mouthpiece of the malcontents. Khan Bahadur Yusuf submitted a memorial to the Government of India on behalf of the Central Muhammadan Association. I draw the pointed attention of this House to an extract of Mr. Ameer Ali's article, "The Retrospect," published in the *XIXth Century and After* of 1905. The extract runs thus: "Muslim law declares in the most emphatic terms that charity to one's kith and kin is the highest act of merit and a provision for one's family and descendants to prevent their falling into indigence, the greatest act of charity. Accordingly, family benefactions have existed for the last 13 centuries and all sects and schools are unanimous in upholding their validity. The institution is traced to the prophet himself, who created a benefaction for the support of his daughter and her descendants and is in fact placed in the same category as a dedication to a mosque."

Perpetuity to ensure against family poverty is as old as Plato, who laid down for his ideal Republic that "each citizen will have a lot of land sufficient and not more than sufficient for the sober maintenance of himself and his household. This is to be indivisible, whether by sale, inheritance or testation and inalienable." (See Newman's Aristotle Politics, Volume I, page 441.)

Khan Bahadur Yusuf urged before the Full Bench in the case of Bikani Mia *versus* Shuklal, reported in 20 Cal. I.L.R. series, page 126, in which Mr. Justice Ameer Ali dissented from the majority decision, that "the *wakf* is a disposition for a consideration just as a sale, with this difference that the consideration in the latter is a worldly gain whereas in the former consideration is *sawab* and has a value hereafter." But this was not accepted on the ground that the *sawab* had no earthly and therefore no judicial value. But Khan Bahadur's view was accepted by the learned Judges in the case of Mufazal Karim *versus* Mohammed reported in 1 C.L.J. 166.

Ultimately, however, Sir, both the contentions of Mr. Ameer Ali and Khan Bahadur Yusuf were set at rest by the Wakf Validating Act, VI of 1913. Dedication to mosque was not differentiated from the *wakf* for the *wakif's* ownself and for his family. On the other hand, family provision was regarded as the best form of charity in the eye of Muslim law. Hazrat Mohammed himself pronounced: "A pious offering to one to provide against getting into want is more pious than giving alms to beggars." (See Miscatual Masabih, Cal. 1809, Volume I, page 455.) On this plea the Government and other non-Muslim critics were silenced and Mr. Ameer Ali triumphed. He wanted to protect the family benefactions as so many family insurances and stated the effect of the Privy Council decisions thus: "No permanent benefaction nor the continued existence of family influence or prestige without which progress is out of question would be possible."

Notwithstanding, Sir, the family provision being one of the best forms of charity according to Muslim law, how can you seriously attempt to distinguish *wakf-al-al-aulad* from *wakf*. To my mind, considering the preservation of the family being the most beneficial object of charitable work, the family *wakfs* should be under greater control and vigilance. For, in case of *wakf-al-al-aulad*, a beneficiary, if deprived of his allowance, is stranded and gets no other source to fall back on. But in case of other *wakfs*, beneficiaries are not solely dependant on the income thereof. Are you, Sir, prepared to hold that *wakf-al-al-aulad* is not intended for pious, religious or charitable objects? Does Muslim law distinguish one kind of charity from the other? You know, Sir, the basis of the validity of both kinds of *wakfs* is the same, viz., charitable object. In both kinds of work, the property dedicated vests in *Allah* for the benefit of mankind. The Muslim public are immediately interested

in *wakf-al-al-aulad* because they have a right to see that the provisions of the *wakf* deeds are properly carried out so that the beneficiaries may receive the benefit thereunder properly and regularly and also to see that they may not fall a prey to unscrupulous *mutwallis* and being thereby deprived of that legitimate benefit under such *wakfs* may not be a burden on the community. The Muslim public are interested ultimately in the corpus of the property; because they have a right to see that the corpus of the property may not be destroyed or encumbered before it reaches the ultimate beneficiary, *viz.*, the poor, or other pious or charitable or religious objects. Needless to repeat that the distinction between a *wakif's* descendants and the poor is not recognised by Muslim law. They are in the same category. Therefore, the public are equally interested in both category of beneficiaries. The difference lies only in the point of time when one category is entitled to the immediate benefit and the other category is postponed. In having proposed to treat the *wakf-al-al-aulad* as something like an untouchable personal property too sacred to be open to the view of the Muslim public, the mover has reaffirmed the position which was negatived by the Wakf Validating Act, VI of 1913. I do not, Sir, find any logic in the amendment demanding a separate aristocratic treatment of the *wakf-al-al-aulad*, although I appreciate the motive for them. They are, frankly speaking, intended to protect some particular *wakfs* and for the matter of that some particular *mutwallis*, who are probably 25 *per cent.* or 35 *per cent.* The whole object of this Bill is to give some physical forms to God's wrath upon the *mutwallis*, who mismanage and misappropriate His acre. Is the *mutwalli*, who does not pay for the educational or maintenance allowance to the descendants of the *wakifs* provided for in the *wakf* deeds less chastisable than the *mutwalli* who neglects the mosques? Muslim law does not recognise the distinction. God's wrath is in store for both of them in the same measure. God's purpose in both cases is jeopardised in the same degree and in the same manner. Why do we then shirk our responsibility and favour the *mutwallis* of *wakfs-al-al-aulad*, when God does not allow to grant such a favour to them? I therefore request this House to bestow their dispassionate and serious consideration on the question. To my mind, the distinction, if recognised here, will have a far-reaching consequence. It will encourage evasion of the Act. Again calculation of 25 *per cent.* or 35 *per cent.* will involve considerable administrative difficulties. It will entail the maintenance of permanent ministerial staff. Who will pay for the cost of maintenance? With these words I oppose the motion.

Mr. A. K. FAZL-UL HUQ: Sir, if it is not deemed any impertinence on my part I would like to point out to the member in charge of the Bill that the motion moved by the Hon'ble Minister seems not only necessary but extremely reasonable in the circumstances in which we are placed in

connection with this Bill. There is no doubt that the expression *wakf-al-al-aulad* occurs in various reports, and it is obvious that a definition of some kind is necessary, otherwise we should be leaving the whole legislation obscure. It is well known that in consequence of the attempts that have been made in all ages and in all countries by debtors to escape the payment of their debts by fraudulent transactions, the idea was gaining ground in the law courts that the institution of *wakfs* was only a veiled attempt to escape the provisions of the law. By attempting or by alleging to vest property in God Almighty (or, in other words, as somebody put it, that in the case of *wakfs* God Almighty is nothing but *benamdar*), the *wakif* remains the proprietor all the same. It is in consequence of this that when cases came up before the High Court or even went to the Privy Council their lordships tried to draw a line between a valid and an invalid endowment. It was a very difficult task because in some cases where the endowment left very little for purposes of charity the endowment itself was of such a character that it could not be denied that it was beneficial to the general public. On the other hand, there are *wakfs* the income of which was seemingly being dedicated to charity but the entire object of which was the aggrandisement of the *wakif* and the members of his family. In this state of things in one of the decisions it was attempted to be laid down that there must be substantial dedication to charity before you can claim a *wakf* to be a valid *wakf*. This again introduced another difficulty, *viz.*, what is substantial. The idea at one time prevailed that at least two-thirds of the income of a *wakf* should be dedicated to charity before the *wakf* could be held to be a valid one. With the passing of the Wakfs Validating Act, the question of validity or invalidity of *wakfs* has not been set at rest. The provisions of the Muhammadan law as regards the *wakif* and the members of his family are now recognised as perfectly legal and, as has been pointed out by the Hon'ble Minister, the only difference lies in the object with which these endowments are made. Therefore, Sir, it becomes necessary to lay down some kind of definition as to what we should call a *wakf-al-al-aulad*, and the obvious way and the easiest method of doing this is by laying down something like a percentage which would draw a line between *wakfs-al-al-aulad* and those which do not really belong to that category. *Wakfs-al-al-aulad* and other kinds of *wakfs* are mutually exclusive and together they cover the whole field of *wakf*. Therefore once we find that there is dedication of 75 *per cent.* of the profits of a *wakf* to charity, you classify and regard that *wakf* as a *wakf-al-al-aulad*. We must put the line somewhere. If you say "mainly and substantially to charity" we have only to look to law reports and find out how difficult it has been for the judicial officers to determine what is or is not substantial dedication in a particular case. You have, therefore, to lay down a line somewhere, and I submit to the House that the obvious way of doing so is to lay down a certain fraction and that is why in this definition we have laid

down that no less than 75 *per cent.* of the profit of such a *wakf* should be for the maintenance of the *wakif* and his family and relations. It is possible that we can put the profits more or less, either at 70 *per cent.* or 80 *per cent.*, but that is a matter of difference of opinion. I think 75 *per cent.* for the maintenance of the *wakif* and the members of his family is a substantial sum and anything more than that is hardly called for. I therefore submit that this definition so far as a definition can go, is a suitable definition and in view of this consideration I support the Hon'ble Minister with regard to the motion that he has moved.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I have no faith in the sanctity of the figure 75. Suppose it is 74·9; then it will not be considered a *wakf-al-al-aulad*. So a better definition should be found out. In my opinion "the major portion of the available income which is spent on the *wakif* for himself and any of his family or descendants," would be a better definition. We can easily understand what a major portion is. But if you simply say that a 75 *per cent.* test must first of all have to be fulfilled before a *wakf* can be declared a *wakf-al-al-aulad*, I think it will create a lot of heart-burning in the country, especially where some *wakfs* have already been created. In future, this may do a lot of good to all those *wakfs* that have already been created, and if 74·9 *per cent.* of the available income has been set apart for the *wakif* and his family, it will not be right for us now to say that it is not a *wakf-al-al-aulad*. So I suggest to my friend the Hon'ble Minister whether he could in the case of *wakfs* that have already been created modify his definition by saying "that the major portion of the available income of which has been meant for, and is payable to, the *wakif* himself and the members of his family." It will satisfy all sorts of criticisms, and I do not believe the House will object to this humble suggestion of mine.

Maulvi ABDUS SAMAD: I strongly oppose this amendment on the ground that after the passing of the Wakfs Validating Act there are no *wakfs* which can be called *wakfs-al-al-aulad*. It is a misnomer. According to the difinition as given in this Bill a *wakf* means "permanent dedication by a person professing the Mussalman faith of any movable or immovable property for any purpose recognised by the Mussalman law as pious, religious or charitable and includes a *wakf* by user." As my friend Mr. Fazl-ul Huq has just now enlightened the House, before the passing of the Wakf Validating Act British Courts in India and also the Privy Council, refused to recognise such *wakfs* as valid unless a substantial portion of the income of the property dedicated was given to charity. It was urged that to make provision for the maintenance of one's own family and children is a pious and charitable object and hence the Validating Act was passed to make these *wakfs* valid whatever may be the proportion of the income of the property set apart for

really charitable and religious purposes. If the amendment is carried, people will be careful to see that their *wakfs* come within the definition of "*wakf-al-al-aulad*" as defined by this amendment by providing more than 75 *per cent.* of the profits for the maintenance of the family and descendants. Thus it is obvious that the very object of the measure will be frustrated if the amendment is accepted. After the passing of the Validating Act the bulk of the income is set apart for the maintenance of one's own children. So, Sir, there is no necessity for making this individious distinction between *wakfs* in general and *wakfs-al-al-aulad;* it is both against the spirit and the letter of the law. On that account I oppose this amendment.

Maulvi TAMIZUDDIN KHAN: Mr. President, Sir, the object with which this amendment has been moved by the Hon'ble Minister has been very clearly explained by him and also the matter has been very ably and clearly dealt with by our leader, Mr. Fazl-ul Huq. The opposition that has been raised against this amendment seems to have been made under a total misconception of the meaning of the amendment. Those who are against the amendment seem to think that *wakfs-al-al-aulad* will be excluded from the operations of this Act. That is not the case. If they have read the Bill carefully and between the lines, they must have seen that it is quite the contrary. This Act will deal with all kinds of *wakfs* whether they are *wakfs-al-al-aulad* or *wakfs indilla.* They will all come under the purview of the proposed Act. But what is important is whether all *wakfs* should be treated in the same way under the provisions of this measure. I think my friends have seen that in the Bill there is a provision for levy of a cess on *wakfs*, and in this respect so far as the *wakfs-al-al-aulad* are concerned, they will be treated far more leniently than public *wakfs*. Do they not wish that some difference should be made between ordinary *wakfs* and *wakf-al-al-aulads* in this respect? Therefore, there must be some difference in treatment between these two kinds of *wakfs*. *Wakfs-al-al-aulad* must be defined for otherwise there will be all kinds of disputes and it will be very difficult to give effect to the provisions of the Act. My friend Maulvi Abdus Samad has said that after the passing of the Validating Act there is no meaning in the expression *wakf-al-al-aulad*. I do not think so. To my mind, on the other hand, the term has acquired a definite meaning only after the passing of the Wakf Validating Act. My friend, Nawab Musharruf Hosain, said that there is no need of fixing a percentage. He says that in place of a fixed percentage the words "major portion" should be substituted. What is the meaning of the words "major portion."? It may be anything between 51 *per cent.* and 99 *per cent.* If it is left vague like that it will give rise to all kinds of doubts and disputes that will stand in the way of smooth working of the Act.

Dr. NARESH CHANDRA SEN GUPTA: Mr. President, Sir, I must at the outset make it clear that I do not propose to vote on this motion, as it is a matter of policy which should be decided by Muslim members alone. But my intervention in this debate is actuated by my desire to lay at rest the confusion that has arisen over this question. I should like to point out the implications of the amendment before the House, because by accepting or rejecting it, considerable changes may be made in the Bill. Sir, it has been said by Mr. Abdus Samad that the passing of the Validating Act has abolished the distinction between two kinds of *wakfs*. Nothing of the sort: The distinction has not been abolished. The distinction is still there. But then there is this point. The whole purpose of the agitation for the recognition of the *wakf-al-al-aulad* was that the *wakf* was not a mere private endowment because according to the Muhammadan law provision for the maintenance of one's children was itself a pious object and a form of service of God and secondly because even in these *wakfs* there was always an ultimate gift to charities and pious objects. So then it must not be considered that the *wakf* property is a private property, otherwise there would be no sense in the Validating Act. If it is God's property, then you must treat it in the same manner as other properties. You must see to its proper control, and also that it is properly utilised for God's purposes. Then, Sir, when an attempt is made to provide for such control by this Bill, you cannot turn round and say that these *wakfs* are in no sense God's property but merely family settlements and for that reason they should not be subjected to the same amount of scrutiny by the Board as other *wakfs*.

The Hon'ble Minister in his opposition to my amendment for the deletion of clause 3 pointed out that numerous questions have got to be decided by the Court. I think he ought to have stuck to the principle and left it to the Board to decide in which case a particular treatment should be given. On the contrary, what he wants to do now is to tie the Board hand and foot in a manner which is not to be found in the *Shariat*—not to be found in the Muhammadan law. According to the *Shariat wakfs-al-al-aulad* are those which exclusively benefit the family and the descendants of the *wakif*. Where the whole does not go to the *aulad* it is not *wakf-al-al-aulad*. But by this definition we are revising the Muslim law and creating a new class of *wakfs-al-al-aulad* in which not the whole but only 75 *per cent.* of the income goes to the heirs. That is a most arbitrary and artificial piece of legislation. Well, the object of this Bill is to ensure that the charities are properly managed, that the trusts should be properly run, and that should be done not only in respect of *wakfs* where more than 25 *per cent.* goes to charities but also in respect of other *wakfs* where the percentage is different, and this distinction by percentage is meaningless. Suppose there is a *wakf* which brings in an income of Rs. 100, and only Rs. 25 out of that goes to the *aulad*, leaving Rs. 75 only to charities: That *wakf* would come

under the fullest control of the Board. On the contrary, there may be *wakfs* which bring in a revenue of one hundred lakhs of rupees of which 75 *per cent.* goes to the *aulad* and the rest to the charities. According to this definition, that *wakf* will go out of the strict control of the Board though here the charities are to the extent of 25 lakhs of rupees. The effect of defining by percentage would thus be that large charities will go out of the strict scrutiny of the Board. What is the reason behind this? The only conceivable basis of a distinction can be whether there is a substantial dedication to charitable purposes. This amendment, therefore, is unreasonable. It might be said that it might have been provided that in the case of *wakf-al-al-aulad* where there is no substantial dedication for charities you might exclude them from the control of the Board: but so far as these *wakfs-al-al-aulad* is concerned, there are gifts to charity. It depends upon the value of the property; whether that property is large or not. I submit, Sir, that this rule-of-thumb should not be applied. Looking at the amendments proposed by the Hon'ble Minister to sections 44, 47, 47A, etc., it is clear that the effect of this amendment would be to take a large number of *wakfs* where there are substantial gifts to charities outside the strict control of the Board which the Bill seeks to provide. There will be some amount of control exercised, there will be enrolment and there will be submission of accounts, but there will be none of that scrutiny, none of that control which the Board will exercise in respect of other *wakfs*.

Maulvi SYED NAUSHER ALI: Mr. President, Sir, what I have to say has already been anticipated by the learned Dr. Naresh Chandra Sen Gupta. He has in his very able speech said what I intended to say. If a differential treatment has got to be made for *wakfs-al-al-aulad* I take it from Dr. Naresh Chandra Sen Gupta the definition must be artificial to a certain extent. We have got to administer it by the principle of rule-of-thumb or something like that; or you have got to take certain principles for determining what are called *wakfs-al-al-aulad* to distinguish them from other *wakfs*. Now if there is to be a definition, I think the best course is to define it by certain percentages. I do not think there can be any other definition which will be free from ambiguity or difficulty, but the question is whether it is at all necessary to define its terms, because, in my opinion, it is not at all necessary to make any differential statement in the Act itself of what the *wakfs-al-al-aulad* are. The House has already accepted clause 3 of the Bill, and it has given power to the Local Government to exclude any *wakf* from any of the provisions of this Act, and I understand, subject to rules framed by Government, that amendment has been accepted. If that is so, I see no reason why there should be any anxiety to provide some specific word in the Act itself for the differential treatment of *wakfs-al-al-aulad*. Now it is well known that all *wakfs*, whether *wakfs-al-al-aulad* or *wakfs*, are vested in God, are God's property, and as has been

admitted by the Hon'ble Minister in charge that there is no distinction in the *Shariat* so far as the control and superintendence of the property is concerned, but now in this Act we are for the first time going to introduce a different statement between one clause and another clause. I say with due respect to all that it is an attempt to encroach upon the *Shariat* itself, which will be resented by the Mussalman community and everyone, and I do say with all the emphasis at my command that it will be unwise on the part of the Council and on the part of the Mussalman members of the House to allow this encroachment on Muhammadan law itself. Now, the next thing—I am not speaking of principles—but coming to the question as to how inconceivable difficulties this provision itself will lead us to. It is well known that the ultimate benefit goes to the poor, and if a differential treatment has got to be given to this *wakf-al-al-aulad*, the result will be this; you have got to go on with a particular *wakf* when a particular *wakif* dies, when a certain beneficiary dies. When the income fluctuates from day to day, from month to month and year to year, it will be almost impossible to go on with these innumerable *wakfs-al-al-aulad* when it is 75 *per cent.* or when that is exceeded, or when it is below 75 *per cent.* That is one thing. The second is how do you know when a particular beneficiary dies whether his whole family or descendants are all extinct or that it would cease to be any longer *wakf-al-al-aulad?* Therefore, in my opinion, after this clause has been accepted by the Council, there is absolutely no necessity whatsoever now for this Council to make a differential treatment of *wakfs-al-al-aulad* from the rest of the *wakfs*. With these words, I submit for the consideration of the House whether it is at all necessary to introduce this definition or introduce any differential treatment in the Act itself.

Khan Bahadur Maulvi AZIZUL HAQUE: I am afraid, Sir, as my friend Maulvi Tamizuddin has suggested, there has been a certain amount of misunderstanding as to the actual scope of this definition. If you will kindly look at the Bill itself, as it emerged from Select Committee, it will be noticed that there is a definition which the Select Committee accepted for private *wakfs*. If there was no such provision throughout this Bill as regards some differentiation being made between public *wakfs* and private *wakfs*, I would have been certainly in favour of deleting this clause altogether. But if it is intended that at some stage or other there should be some differentiation between the *wakf* of a public nature and a *wakf* where the beneficiaries are mostly belonging to a particular family, or thereabouts, then I think some definition is needed. I must make it clear that I am not at all in sympathy with the many provisions attempted to be subsequently introduced by making a wide difference between *wakf-al-al-aulad* and general *wakf*. For example, when going through the amendment I find the Hon'ble Minister gave notice of making a differentiation as regards grants of a

public nature and as regards reserve fund money to be given to the public. As regards the obligation for audit that would be done only at the instance of a majority of the beneficiaries, as regards the supply of accounts under section 44, and their financial position, I must say that with the majority of these I am not at all in sympathy. But in view of the fact that I am in sympathy with one or two of them, I am not in favour of deleting this clause, because the only way in which it can be incorporated in the Bill is by putting the definition in at the very beginning. I am not in sympathy; I would have favoured the deletion of this, but I think the hon'ble member in charge of the Bill, Mr. Abdul Ghani, would also admit even this much that under this financial provision, the *mutwalli* will pay a certain amount as directed by the Bill to the poor. It is the view of a good number that some distinction should be made. If it is made, then some definition should be provided, and should it be for private *wakf*, or should it be for *wakf-al-al-aulad*? I certainly consider that at one stage in select committee the definition was provided. It is better to accept the definition of *wakf-al-al-aulad* in respect of *wakfs-al-al-aulad*, which has come into Muhammadan law for good or bad. As I said, I do not see eye to eye with all the provisions, but as I find controversy regarding this particular provision will be raised, I fully support the amendment which has been moved.

Maulvi ABUL KASEM: Sir, if I intervene at this stage of the debate, on this motion, it is because I owe it to myself to offer an explanation and at the same time to give some information to the House. In the Moslem Wakf Law of 1923, it was laid down in clear terms that *wakf-al-al-aulad* does not come within the purview of that Act, and why was it done so? That is the explanation I beg to offer. *Wakf-al-al-aulad* is called a *wakf*, but it is more or less a settlement made by the Mussalman for the benefit of his own descendants. That is to say, that was the Mussalman law, and it was deemed to be such from time to time, but the Calcutta High Court in a full bench judgment in which the Hon'ble Mr. Justice Ameer Ali laid down what is now an historical fact in the true sense of the word, that a settlement in favour of one descendant was only a camouflage to cheat creditors or to have a permanence in the state, and the Privy Council supported this judgment of the Calcutta High Court, and after that there has been a great commotion among the Muhammadans and agitation all over the country to the effect that right or wrong, it was laid down in the Muhammadan *Shariat* that *wakf-al-al-aulad* is a valid *wakf*, and at the same time it was considered a pious act; whether Christians, Jews, Atheists or Hindus consider it so or not, the fact remains that the Mussalmans considered it a pious act to make a settlement for their descendants. The Mussalman law, as it is, is against perpetuity, but in this particular Bill an exception has been made to that perpetuity with certain restrictions, and therefore, the Mussalmans have to take steps to see

that the judgment of the Privy Council did not evade the law of the land, and naturally a Bill was moved in the Imperial Legislative Council but it was thrown away, and without creating any new law only validated the *wakf-al-al-aulad* which has become invalid by the judgment of the Privy Council. As such, the object of the legislation is to control or supervise or to see to the proper management of *wakf* estates, and to see that the *mutwalli* or those who are the trustees of the *wakf* estates, do not abuse their power or misappropriate the money. It is not a question of public money or a public body for which the *wakf* has been created and is being carried out. With this object all attempts at legislation have been made and the Mussalman Wakf Act of 1923 was passed with that object, and in that Act the *wakf-al-al-aulad* was excluded because at that time it was thought, and I think and I yield to none, in saying that it is no use bothering the public or the legislature or the courts of justice by interfering with the *wakf-al-al-aulad* beyond the fact that its existence remains, and it is not absolutely destroyed because in all *wakfs-al-al-aulad* the ultimate and future beneficiaries are the public at large, and that will happen when the other beneficiaries are there to protect the future, I mean the long distant future, interests of the public. We have to see that *wakf* estates are kept intact, and not destroyed so far as control is necessary. As regards the various beneficiaries of the *wakf-al-al-aulad* in a family are concerned, if there is any disagreement between the *mutwallis*, they can go to a court of law and it is not for the Board, the Wakf Board to interfere with them. It is now suggested to define *wakf-al-al-aulad*, and at the same time to exclude it from the operations of certain provisions of this Act. Our business is not to poke our nose into the affairs of everybody, but to see that money which our ancestors have arranged for the benefit of the community at large is not misappropriated. This is only a business for charitable purposes to be carried out. It is for the descendants to look after, neither the legislature nor the court. My friend Maulvi Abdus Samad has said if these *wakfs-al-al-aulad* are excluded from the operations of the Act, this new Act, it is no use having it at all. I find from his speech that the real object of this legislation of Maulvi Abdul Ghani is not to interfere with the personal interests of the *mutwalli* and for his descendants, and not to secure money for the benefit of the public at large and to seek very carefully for the use for which the *wakf* money is to be spent. That is our business and nothing further. We should not interfere with the *wakfs-al-al-aulad* or in any way with the terms of the *Shariat*. The *Shariat* lays down that *wakf-al-al-aulad* is a valid work of supporting and maintaining one's family and it is our business to see that the operations of the *wakf* and this kind of *wakf* intended for the public at large should be so managed that the people derive the benefit of it. Nobody would have interfered with this legislation, but the thing is this, that a very large number of *mutwallis* one after another have come to regard the *wakf* estates as their personal

properties and have misappropriated the income. That gave rise to a strong feeling among the Mussalmans and, therefore, they wanted legislation and they got one in the shape of the Wakf Act of 1923 which was passed by the Assembly. But it was found in practice that a machinery was wanted to carry out the provisions of that Act. So the Mussalman members of this Council including myself have tried from time to time to get some sort of legislation passed to start a machinery for giving effect to the provisions of the Wakf Act and to have a more direct supervision over the management of *wakf* estates. But unfortunately His Excellency the Governor one after another refused to give sanction to this sort of legislation. Thanks to the present Government at any rate that my friend Maulvi Abdul Ghani has obtained the necessary sanction to introduce this Bill. He has introduced a Bill which was carefully considered by the Muhammadan Wakf Committee consisting of two High Court Judges and two distinguished lawyers. Then after their report came out, they redrafted the Bill and sent it to the Select Committee. The Select Committee went very carefully into the provisions of the Bill, and it was agreed that we should leave *wakf-al-al-aulad* alone, and it was done in the name of a private member. Therefore, this amendment wants to keep in conformity with the *Shariat* called the *wakf-al-al-aulad*. The Select Committee went so laboriously into the matter that my friend Maulvi Abdul Ghani will agree with me when I say that they have practically changed the whole Bill, lock, stock and barrel, and it has come out of the Select Committee in such a shape that its parent will not be able to recognise its child. Its definition is really in conformity with the Islamic law and will suffice for our purpose. As regards the question of 75 *per cent.* or 25 *per cent.* of the net income, I beg to offer an explanation and it is this, that practically there is no *wakf* where the *wakf* does not make some provision for the support of the *mutwalli* or some of his descendants, and there is always some portion left for the maintenance of a mosque or for charity. *Wakf-indillah* means that the bulk of the property is intended for public benefit and *wakf-al-al-aulad* means that it is intended for the benefit of the *mutwalli* and his descendants. Maulvi Nausher Ali has said that the ultimate beneficiaries are poor, but in the case of *wakf-al-al-aulad* these ultimate beneficiaries come after some generations; it will come after several legislators have come and gone. Therefore, it is necessary that there should be at the present moment some distinction made. I do not say that it will be resented by the *mutwallis* or the beneficiaries, but it would be a futile attempt on the part of the Board to spend its time and energy in cases in which they are not interested. The interested people are the beneficiaries and if they have any grievance they can go to court, whereas in the case of public *wakfs* nobody will take upon himself the responsibility of a civil proceeding. Therefore, it is necessary that Government should take some steps to prevent the exploitation or misappropriation of these *wakf*

properties, and I think it is absolutely necessary that there should be some definition. Whether the definition is correct in legal term or not, it is both for the Legislative Department and the lawyers to decide. For the same reason I have to insert a section excluding *wakf-al-al-aulad*. The same reason applies in the case of the present Bill. The Wakf Act of 1923 only laid down certain duties of the *mutwallis*, whereas this Bill empowers the Wakf Board to interfere, check and administer any *wakf* estate. Therefore, *wakf-al-al-aulad* should be excluded from the operation of this Bill.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, I appreciate the enthusiasm of my friend, the mover of this amendment, who wants that all *wakfs* irrespective of their character should be included within the scope of the Bill and that we should have a proper supervision and check over such *wakfs*. He will, however, excuse those whose age and experience tell them that they ought to move very cautiously in matters like this. As regards the legal status of the two kinds of *wakfs*, I do not contend that there is any difference in the Islamic law. As a matter of fact, the Islamic law makes no difference between *wakf-al-al-aulad* and *waqf-indillah*, but the reason why a differentiation should be made has already been explained by Maulvi Tamizuddin Khan and the last speaker. The reason is this: We are legislating now with a particular purpose, namely, that the income which has been left by the *wakfs* for charitable purpose should not be misappropriated. Had there been no such thing as charitable *wakfs*, nobody would have bothered himself or taken the least step to see that the beneficiaries or those who are benefited by these settlements should have a legislation by which Government should control such endowments. The only reason why this Bill has been introduced is that most of the *wakfs* in Bengal are for charitable purpose, and it is necessary that the income which is really meant for the public should be properly utilised. If all the *wakfs* had been included in the same category and no differentiation made in the Bill, the result would be that it would cause harassment and worry to many *mutwallis* of *wakfs* with whose income the public has got no concern at all; and for that reason the original definition of private *wakfs* was introduced in the Bill. As a matter of experience, it has been found that purely private *wakfs* are non-existent in Bengal. There is no *wakf* created by Mussalmans in which at least a certain portion of the income is not set apart for charity. Although a private settlement for one's family may be made, still a small portion is always dedicated to purely charitable purposes. Therefore, to say that a private *wakf* is one which is entirely a family settlement would be a misnomer. At the same time it is not intended that the *wakfs* which are really family settlements should be brought within the purview of this Bill. For that reason a *via media* has to be evolved and the definition which

has been given by the Hon'ble Mr. Nazimuddin is for all practical purposes a proper one. You will see that the Bill does not exclude or lose sight of private *wakfs-al-al-aulad* altogether. There are certain chapters which include *wakfs-al-al-aulad* also within their scope; for instance, section 40, which deals with enrolment of *wakfs*, is common to all. But there are certain other chapters which apply, and rightly apply, only to *wakfs-indillah*, *i.e.*, *wakfs* for charitable purposes. As regards the question raised by Dr. Naresh Chandra Sen Gupta as to what happened to the 25 *per cent.* of the income, I would refer him to amendment No. 106 of the Hon'ble Minister. He will find that any person interested in the *wakf-al-al-aulad* or a beneficiary has a right to apply for an inquiry if the particular *wakf* is maladministered. They have the same power as in the case of a *wakf-indillah*. Then again, if he will turn to amendment No. 180, he will see that a new chapter has been introduced to deal particularly with *wakf-al-al-aulad*, *i.e.*, those *wakfs* in which my frieud is interested. Therefore, it is not right to say that the 25 *per cent.* is absolutely lost sight of. Those *wakfs* have also been provided. Then he has given an example; supposing the income of a *wakf* is a very large sum, 25 *per cent.* of that sum should not be treated lightly. It is inconceivable that in Bengal we shall have a *wakf* yielding so large an income as my friend thinks. In fact, the number of *wakfs* which have an income of more than Rs. 50,000 can be counted on the fingers of one's hand. Therefore, what is the use of speculating on things which we have not got at all? But even if we had such things, I think they should be looked after properly and proper arrangements would be made to see that such charitable institutions are not lost sight of. I think, after the explanation given by me, it is certainly necessary to make a differentiation between what we call *wakfs-al-al-aulad* and *wakfs-indillah*

(At this stage the House was adjourned for 15 minutes.)

(After adjournment.)

Khan Bahadur Maulvi AZIZUL HAQUE: May I suggest a slight verbal change to the Hon'ble Minister? It seems that he has omitted a certain phrase from the definition of *wakfs* that was in the original draft, namely, he has now defined that a *wakf-al-al-aulad* means a *wakf* under which not less tthan 75 *per cent.* of the net available income is payable to the *wakif* for himself or any of his family or descendants. If you will kindly look at the definition which was in the original Bill you will see that there were the words "for the time being." These words have been omitted in the present definition. But I think it would make the intention clear if those words were added. Otherwise, it might be that so far as it is payable, it would come under this definition for all time to come even though the

actual charity might ultimately operate. So I would suggest that the words "for the time being" be inserted after the word "is" in the second line.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I think this definition will cover that idea, but if I am advised by others, I may accept this modification of my amendment. (Pause.) I am advised, Sir, that there is no objection; so I accept the amendment.

The motion of the Hon'ble Minister was then put in the following modified form and agreed to:—

"(9a) '*wakf-al-al-aulad*' means a *wakf* under which not less than 75 *per cent.* of the net available income is for the time being payable to the *wakif* for himself or any member of his family or descendants."

The motion that clause 4 as amended stand part of the Bill was then put and agreed to.

Clause 5.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that to clause 5 the following words be added, namely:—

"and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued."

The reason for this is that in clause 56 the Board will have control over, and the disposal of, the Wakf Fund; therefore, it must be a body corporate, able to sue and be sued.

The motion was put and agreed to.

The motion that clause 5 as amended stand part of the Bill was put and agreed to.

Clause 6.

Maulvi MUHAMMAD HOSSAIN: I beg to move that in clause 6 (1) (a) in line 2, after the word "whom," the word "only" be inserted. Sir, the significance of this amendment will be clear from the language used in this clause in—

"only one shall be *mutwalli*."

So, likewise I should like to point out that unless the word "only" be added after the word "whom," the meaning that only one shall be a *Shia* remains ambiguous. So, in order to clear up this point I place my motion for the acceptance of the House.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I do not think, Sir, there need be any objection to accepting this amendment.

The motion was put and agreed to.

Haji BADI AHMED CHOWDHURY: I beg to move that in clause 6(*1*)(*a*), in lines 2 and 3, for the words "only one shall be a *mutwalli*" the words "two shall be *mutwallis*" be substituted.

He spoke in Bengali in support of his motion. The following is a translation of his speech:—

Mr. President, Sir, in moving this amendment I beg to state that the Wakf Board which is to be constituted under the provisions of this Bill will have among its members only one representative from the *mutwallis*. This Board will administer all the *wakf* properties in Bengal. Hence, I propose that instead of one there should be two members elected to the Board by the *mutwallis*. The Board will be entrusted with the sole charge of all the *wakf* properties in Bengal and will be called upon to look into the grievances of the *mutwallis* as well. Now, if there be only one *mutwalli* member on the Board and if he happens to be absent on any occasion, there will be no one to look to the cause of the *mutwallis*.

If the plea be put forward that any further addition to the membership of the Board will make it unwieldy, we would like to point out that many Boards that have already or will in future come into being as the result of new legislations have a larger number of members on them than this.

To the suggestion that the further addition of one member will push up the expenses of the Board, our reply is that when the whole cost of maintaining a Commissioner on the Board, the travelling allowances of no less than seven members as well as other miscellaneous items of expenditure will be met out of the income of the *wakf* properties, the *mutwallis* and all those who enjoy allowances from the *wakf* properties will not grudge the extra expenses that will be incurred on account of an additional member on the Board.

It may be said that increased *mutwalli* representation will not be favourable to the Board exercising its control over the *mutwallis*. But in spite of the addition as proposed by me the entire strength of the *mutwallis* will not exceed a third of the total strength of the personnel of the Board. There will always be a clear majority to act as a brake.

Under section 6 of the Bill in question Government will for the first three years nominate 6 members, including the Commissioner, to the Board, out of a total of 8 members. At the end of this period the strength of the nominated members will be 5. Thus, the number of elected members on the Board will be very small. Under none of the

legislations that have of late come into being, *e.g.*, the Bengal Municipal Act, the Local Self-Government Act, etc., is the provision for elected members so small.

Hence, in order that the number of elected representatives of the *mutwallis* may be two instead of one only I move this amendment of mine. I hope you will support it.

Khan Bahadur Maulvi AZIZUL HAQUE: Mr. President, Sir, it speaks of a very great forbearance on the part of this House that there is no motion for the abolition of the provision that there should be no *mutwallis* on the Board itself, because, Sir, the very justification of this Bill is likely to be frustrated. And I think, Sir, that if the Select Committee have put in a provision for one *mutwalli* it is because they thought that there should be at least one representative who should have knowledge of the internal administration of *wakfs*, but to claim that there should be another additional *mutwalli* seems to me to be a preposterous proposition, and I submit that if this proposal be accepted it will be taking advantage of the House. I think that the Select Committee has left the question open so far as this Council is concerned. I can well visualise that some *mutwallis* may be so powerful that they may capture practically the Board and lord over it. Sir, it is because of the tremendous agitation which has been carried out throughout the country that this question of the abolition of *mutwallis* came to the fore. Accordingly, the appointment of two *mutwallis* is out of the question. Sir, we have five members on the Board of which one shall be a *Shiah* and only one shall be a *mutwalli*; two members to be elected in the manner prescribed by the Local Government, by the Bengal Legislative Council from among members of the Council. That being so, Sir, I fear that the question of having two *mutwallis* on the Board is wholly beside the point. With these few words, Sir, I oppose the amendment.

Maulvi ABDUL GHANI CHOWDHURY: Sir, I rise to oppose the amendment which has been moved by my friend Haji Badi Ahmed Chowdhury. The Board will sit on judgment upon the actions of the *mutwallis*. If the number of *mutwallis* has to be increased then there is no point in having the Board, inasmuch as the thing will go on as before. With these few words, Sir, I oppose the amendment.

The motion was put and lost.

Maulvi HASSAN ALI: Mr. President, Sir, I beg to move that in clause 6 (*1*) (*a*), after the word "*mutwalli*" in the last line, the words "and one at least shall be a Moslem divine from among the *Ulamas* of Bengal" be added.

Sir, in these days, the words "divine" and "divinity" are very frequently heard with much ridicule. In spite of this, Sir, I have tabled this amendment with much deliberation. My reason is this:

Sir, already in the country there is a considerable amount of fear amongst the Muslim public that encroachments may be made upon the *Shariat* by this Bill if it is pased into Act. We all know, Sir, that the *Shariat*, that is, the Islamic law, is bound up with the very religious life of the Mussalmans. And I believe, Sir, that everyone knows here that the whole code of Islamic laws have been derived from four sources, namely, first, the Revelation which means the holy *Quoran*; secondly, from the *Hadis* which is a collection of the traditions in respect of the doings and sayings of the holy prophet; thirdly, from *Qeyas* which means the sum total of the juridical inferences of the Moslem jurists; and fourthly, from the *Ejma*, which means unanimous concordances of the Moslem doctors of law among the followers of the prophet in a particular age. I believe, Sir, on a question of law, that almost all of us know that these four are written in Arabic: it is a very difficult language no doubt, and is absolutely foreign to many of us here. Specially is this the case in the case of *Shariat*, where the services of the *Ulamas* have to be requisitioned for interpretations. It will be admitted on all hands that the various encroachments have been made from time to time upon the Islamic laws by the British courts and so the fears of the Muslim public in this country are not without foundation. I need not quote instances of such encroachments which have aggrieved the Mussalmans. We, the Mussalmans, all know of, at least, some of them. Therefore, Sir, I have deliberately suggested that in order to save the *Shariat* from any further encroachments by such persons who are not versed in Islamic law—in original Arabic—the Board should have one representative of the Muslim divines, at least one from among the *Ulamas* of Bengal. With these few words I commend my motion to the acceptance of the House.

Maulvi SYED MAJID BAKSH: Mr. President, Sir, I am rising for the first time to speak on this Bill, though I feel that my intervention would have been best spared as regards the sources of the Muhammadan law. My friend the previous speaker has placed the *Quias* in the third position in relation to the other sources. The word "*Quias*" means inference and therefore it should come after *Ijma* which is an Arabic word and which means (Here the hon'ble member cited an Arabic text), that is collections from the acts and directions from the companions and followers of the prophet.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order, Sir. Is the hon'ble member relevant in referring to these things when we are discussing a different matter? He is giving us a discourse on Arabic and Islamic law.

Maulvi SYED MAJID BAKSH: My reason, Sir, for digression is that some members have misled the House. As I was saying, Sir, I beg to differ from my hon'ble friend Maulvi Hassan Ali.

My next point is, Sir, that the amendment proposed is not at all wise, because the business of the Board will be the administration—the secular administration—of the properties according to the existing law of the land and not the knowledge of the Arabic text of the *Shariat*. As regards that, my friend has enough safeguards, inasmuch as if he be so good as to read the amendments properly he would find that there is a provision for two assessors both of whom, in the nature of things, are likely to be Muhammadan jurists. Of course, I admit, Sir, that this will create further difficulties, but that is a point which I shall deal with later on. Moreover, the Muslim law that is being administered in this country, which, by-the-bye, is called the Muhammadan law, is the law that has grown by means of judicial decisions coupled with undecided points of Muhammadan law.

As regards *wakfs* the legal aspect has been thrashed out many times before the Privy Council, and so I think that there will not be any difficulty envisaged by the mover of the amendment.

(During the course of the speech there were many interruptions which were not audible at the reporters' table.)

Maulvi ABDUL CHANI CHOWDHURY: Mr. President, Sir, I beg to oppose the amendment which has been moved by my friend Maulvi Hassan Ali. If his proposal is accepted, it will make the position of the Board worse, and if the *Ulamas* are included, I am afraid that they will be put into a tight corner. With these few words I oppose the amendment.

The motion was put and lost.

Rai Bahadur Dr. HARIDHAN DUTT: Sir, I beg to move that for clause 6 (*1*) (*b*) the following be substituted, namely:—

"(*b*) One member to be elected in the manner prescribed by the Local Government by the Bengal Legislative Council:

Provided that if the elected member be a *Sunni* Muslim, the Local Government shall have power to nominate a *Shia* member of the Council, if available, or someone else from the *Shia* community."

Sir, before I explain my amendment I ought to tell this House the purpose for which I have tabled it. It is well-known that the *Shia* community, which forms a portion of the population of Bengal, have not a single representative in this Legislative Council. (A voice: "It is not necessary".) I am told it is unnecessary. But what was the necessity of a minority community asking for separate representation from the majority community? According to the numerical strength, there will be 119, Muhammadans hereafter. So the *Sunni* community is going to be over-represented. The *Shias* have no one to fight their battle here; they are a minority community, and are in an unfortunate position. They ought to have some representation in this Legislative

Council. What ought to be the case is, however, different. As a matter of fact, it cannot be denied that the *Shia* community have no representative at present on this Council. Looking round, I was surprised to find myself confronted with the fact that out of 119 representatives of the great Muhammadan community of Bengal.....(A VOICE: "Not yet, there will be".).....I beg your pardon, a large number of the representatives of the Muhammadan community of Bengal there is not a single *Shia* gentleman who has a seat in this Council. That being the position, I appeal to everyone, to every Muhammadan friend, to consider what I am suggesting here. Do not throw away this proposal without thinking, because you are in a position to do anything you like, fair or unfair, but remember you ought to be fair to a section of your community who have nobody except men like myself to feel and speak that they have a just claim. When I was told by a gentleman of the *Shia* community who commands the highest respect of even my friend sitting round here, that there was nobody to represent——

Khan Bahadur Maulvi AZIZUL HAQUE: Is the hon'ble member entitled to speak about a casual conversation with one whose name he is not prepared to disclose?

Mr. PRESIDENT: He is absolutely in order.

Rai Bahadur Dr. HARIDHAN DUTT: Well my friend who would be a worthy representative of the community ought to associate with me in safeguarding the interests of the *Shia* community. Sir, I take my stand here as one who speaks what he honestly feels at present for the *Shia* community of the Muhammadans. (A VOICE: "Is he one of your patients?") No—but I shall be proud to have such patients. I began by saying that the *Shia* community not having any voice in the Legislative Council had no other alternative than to beg of men like myself to speak out their grievances. I do so now.

Maulvi SYED MAJID BAKSH: Have you many of the *Shia* community among your patients?

Rai Bahadur Dr. HARIDHAN DUTT: I am not Maulvi Majid Baksh. It is beneath my dignity to reply to these remarks.

Mr. PRESIDENT: Do not be so hard, but take no notice of words loosely flung at you.

Rai Bahadur Dr. HARIDHAN DUTT: What I find is that the *Shia* community has interest in a large number of *wakf* properties, and I have been told that about 60 *per cent.* of the present *wakf* properties have been instituted and constituted by the *Shias*. (A VOICE: "Why?") Why, that is an absurd question. May I ask what is the Mohsin Fund? Has that originated from the *Shias* or the *Sunnis*?

It was instituted by the *Shia* community; that is an historical fact, and out of this Mohsin Fund 99 *per cent.* of Muhammadans to-day receive proper high education, and out of 99, 98 are *Sunni* Muhammadans. I may not be mathematically correct, but I am practically correct, when I say that almost every Muhammadan gentleman who has received University education has been benefited during the last 100 years from the Mohsin Fund. That Mohsin Fund has been created by a *Shia*. That being so, it is only fair that when you make laws for the guidance of these properties, the *Shia* interest should be given a little bit of consideration. That being my purpose, I am asking you, before it is too late, to turn your attention to the question and see how the wishes of the *Shia* community can be met. What I am suggesting is this: You will find in the Bill two Boards suggested, one for the next three years and another for the subsequent years. For the first or the preliminary Board seven members have been suggested, besides the Commissioner. Without hesitation I may say this Commissioner at the beginning would be a European gentleman. (A VOICE: "Why?") That is what one can intelligently anticipate. Later on a European will be replaced by an Indian. Of Indians 99 *per cent.* will be Muhammadans, because Muhammadans are mainly interested in this matter, and naturally so, and my presumption is that he will be a *Sunni*. Out of these seven seats, five members will be appointed by the Local Government of whom one shall be a *Shia*. This is the only seat which the framer of the Bill out of generosity to the *Shia* community and out of respect for the large amount of grants made by the *Shia* community.....(A VOICE: "This is amendment 60.").....I know, I shall come to that later. This one seat out of kindness and generosity is offered to the *Shia* community. What I am suggesting is, do not be miserly in your generosity, but give them another seat. While enacting (*b*) you have provided two members to be elected by the Legislative Council from among the members of this Council; I also presume that these two members should be *Sunnis*. I hope I shall be contradicted if I am at all wrong. (A VOICE: "Not at all necessary.") My friend says it is not necessary. But I should say he ought to make an intelligent forecast; it is no use arguing like that.

Maulvi ABUL QUASEM: We are not antagonistic to *Shias*.

Rai Bahadur Dr. HARIDHAN DUTT: Whatever that may be, I am glad that you appreciate the *Shia* mentality and their feelings. Therefore, I am suggesting that out of these two members to represent the Bengal Legislative Council, let it be enacted that one member be elected and if that member be a *Sunni*, which he is not bound to be, then Government must be given authority to exercise their power to nominate a *Shia*. The result will be that besides the Commissioner, four members will be *Sunnis*, according to 6 (*i*) (*a*) and one member from Council according to 6 (*2*) (*b*). And thus Government will have

the right to nominate one from the *Shia* community. I am not asking too much; I am asking that the majority community of *Sunnis* should do bare justice to the minority *Shia* community. It is admitted that the *Shia* community has a large amount of interest in this province. It is not like the *Dawoodie Bhora* community whom we have excluded from the Bill. The *Shias* hold responsible positions in Bengal; they have got a large amount of *wakf* property.....(A VOICE: "Not in Calcutta.") No, I have not suggested Calcutta, but in Hooghly, not far from Calcutta. I have no personal sentiment in this matter. I appeal to you before I resume my seat that bare justice should be done to the *Shia* community, more so, because the *Shias* are not represented here. I am standing on the very high ground of neutrality; I have no interest in the matter, I have no axe to grind. Some Muhammadan gentlemen here seem to think I have something to do with it. Certainly it would be very unfair to suggest that. I appeal to my Muhammadan friends of the *Sunni* community to consider their obligations to the *Shias* who form part and parcel of their community, and do justice to them.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Nobody disputes that the *Shia* community should have fair representation on the Board, and I entirely agree with my friend the mover of this amendment that it is necessary that they should have adequate representation. But if you look into the Bill you will find that the *Shia* community has got not only representation, but I think over-representation, if you consider their population and the *wakfs* in which *Shias* are mainly interested. The *Shia* population of Bengal is, I think, about 3,500 in the whole of Bengal, and most of them, I think, live in Murshidabad, Metiaburz and Calcutta. As regards *wakfs*, the highest *wakf* made by a *Shia* to which he has referred, is the Mohsin *wakf*, to which all of us are certainly indebted, not excluding Hindus. But if he will only go back to the Bill, he will find that under section 2 (*a*) that *wakf* has been excluded from the scope of this Bill. Thus, we are left with other *wakfs* created by the *Shia* Moslems in Calcutta, which are mostly in the northern quarter, and some in the district of Murshidabad. And for these, out of seven seats they are given compulsory representation of one. Over and above that, if he will look to amendment No. 60 he will find that the Hon'ble Minister has provided that the Board shall consist of three additional *Shia* members to be appointed by the Local Government, for the purpose of dealing with any matter relating to a *wakf* created by a *Shia*. I think if that does not satisfy the mover of the amendment, it is very difficult to find anything else which will satisfy him. I think the position of the *Shias* has been very well-guarded in this Bill.

Khan Bahadur Maulvi AZIZUL HAQUE: I would not have stood up but for the fact of the interpretation of what is considered to be

practical. I say this is a thing which has never been in the mind of any member of the Select Committee far less in the mind of any Moslem member. I would have thought that the Rai Bahadur with all his liberality and habit of courageousness would have voted in this House in the resolution in favour of the depressed classes, but he now claims for certain rights for another community. I have never heard him speak a word in favour of the depressed classes, but now I find him speaking in favour of another community. Perhaps it is a prick of conscience. I would tell him at once, that we Mussalmans never feel between ourselves that caste difficulty. I may say that every *Shia* is the representative of every *Sunni*, and every *Sunni* is the representative of every *Shia*. As I said yesterday, I do not know whether he got his figures from some of the members of this House, but I can tell him that some of the leading Muhammadans of India have been *Shias*, and there are enough from the *Sunni* community. There is no reason why this should not be so, and I think that my friend knows that perfectly well and it is better that we should abandon that myth, and forget that a Hindu is a representative of a Hindu, and a Moslem the representative of a Moslem, whether it is *Shia* or *Sunni*. I really think that the feeling in this matter is bad enough. I think that this Bill has been drafted in a manner in which enough place has been given to sentiment, and that no one in any way will accept the position that any member of this House is not fit to represent the whole community of Bengal, whether Hindu or Muhammadan. We Muhammadans have no caste consciousness. On this ground I oppose the amendment. The electorate will be an all-Bengal electorate.

Rai Bahadur Dr. HARIDHAN DUTT: Would you take me?

Khan Bahadur Maulvi AZIZUL HAQUE: I would have no objection but for your past history. (Laughter.)

Rai Bahadur Dr. Haridhan Dutt's motion was then put and lost.

Maulvi ABUL QUASEM: I beg to move that in clause 6 (*1*) (*b*), line 4, after the word "Council" at the end, the following words be inserted, namely:—

"who are not *mutwallis* of any *wakf*."

What I have to say in this connection has already been anticipated by the member in charge of this Bill. This Bill seeks to provide for the proper administration of *wakfs* in Bengal, and in charge of this administration are officers who go by the name of *mutwallis*. This Board will be called upon to deal with the action and conduct of the *mutwallis*. So when the Board will be in the position of a judge, there should not be too many judges of their own cause. We find that already one *mutwalli* is going to be compulsorily nominated by Government to represent the *mutwallis* and that representation will last for three years. After the first three years, one *mutwalli* will be nominated

by Government and a representative of *mutwallis* of enrolled *wakfs* will also be elected. So there will be adequate representation of *mutwallis*. So far as the members of the present Council are concerned, there are many *mutwallis* among them and they are very influential mon, and it would be easy for them to get themselves elected to this Board. Therefore, I want the House to seriously consider whether it would be safe to entrust the proper supervision of the action and conduct of the *mutwallis* to a Board with too many *mutwallis*. It is into the conduct and action of the *mutwallis* that scrutiny will have to be made by the Board, and if there are too many *mutwallis*, this scrutiny is likely to be performed in a perfunctory fashion. Therefore, I appeal to this House not to allow these two members to be elected by the Legislative Council to be *mutwallis*.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I am afraid we shall have to oppose this amendment. The mere fact that a particular gentleman is a *mutwalli* does not in any way lower his position in the Muslim community. As a matter of fact, if you make a distinction in this way and if anybody, because he is a *mutwalli*, is disqualified for election, then it will be difficult to find any competent person to be elected to the Board. (Question.) I would like to remind my friend, who is of course very enthusiastic, that even now at the present moment among those who are present here many are *mutwallis*, either small or big. A man has a mosque attached to his house and that mosque is a *wakf*, and so he is a *mutwalli*. Does that prevent his giving independent judgment in any case? I do not think it is wise to disqualify anybody, simply because he happens by accident to be a *mutwalli*. I would go so far as to say that there are Hindu *zemindars* also who stand in the position of *mutwallis*, particularly in South-Western Mymensingh. When this power of election is given to the House, you must credit the House with some sort of discretion and power of discrimination. You must trust the House that they will choose the best person qualified to supervise the *wakf* affairs. The mere fact that a particular gentleman has got a little *wakf* property does not mean that he will always be partial to the *mutwallis*. As a matter of fact, if this amendment were accepted, the mover of this Bill himself will be disqualified from standing as a candidate for membership of this Board. He is more interested in this matter than anybody else. I therefore very strongly oppose this amendment.

Maulvi ABDUL GHANI CHOWDHURY: I am sorry I have to oppose this amendment. The question here is whether a *mutwalli* should be elected by the members of this Council. If the members of this Council think that a particular gentleman who is to be elected by them is a fit person, I do not see any reason why he should be excluded from being elected, only because he is a *mutwalli*.

The motion was then put and lost.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, with your permission, I beg to move—

(1) that after clause 6 (1) (b), the following sub-clause be added, namely:—

"(c) three *Shia* members to be appointed by the Local Government:

provided that the members referred to in clause (c) shall be members of the Board solely in respect of *wakfs* created by a *Shia*"; and

(2) that after clause 6 (2) (c), the following sub-clause be added, namely:—

"(d) three *Shia* members to be appointed by the Local Government:

provided that the members referred to in clause (d) shall be members of the Board solely in respect of *wakfs* created by a *Shia*."

This amendment is really the same, so far as the object is concerned, as amendments Nos. 60 and 61. This is being moved, because we consider that the language is more explicit and clear, whereas the other is liable to be misunderstood. I do not think it is necessary for me to go into the details as to why this has been provided. The subject has already been discussed in connection with Rai Bahadur Dr. Haridhan Dutt's amendment. So far as *Shia wakfs* are concerned, when they are being dealt with by the Board, we feel that three additional members should be appointed who will sit on the Board and deal with the *Shia wakfs*. I think in view of the fact, as stated by Khan Bahadur M. A. Momin, that their total population is 3,500 and that the number of *wakfs* is few as compared with other *wakfs*, this representation would be adequate to safeguard their interests and will give them a real voice in dealing with matters relating to *wakfs* created by the *Shias*. I think the House will admit that this is a fair representation of the *Shia* community on the Board. Theoretically speaking, there is a possibility of more *Shia* members being on the Board, especially by election from the Legislative Council and also by election from the *mutwalli* constituency. But I agree with Dr. Haridhan Dutt that it is likely improbable that the *Shias* will be able to get themselves elected from the abovementioned constituencies. On the other hand, as has been stated by Khan Bahadur Azizul Haque, *Shia* gentlemen have represented the *Sunni* community as their leaders during the last 30 or 50 years, and if *Shias* continue to be members of this Council they may be elected by the Council on the Board; after all, we must remember that one of the leading *Shia* gentleman was a nominated member both in the Legislative Assembly as well as in the Council of State and represented the Muslims of Bengal for a long time.

Rai Bahadur Dr. HARIDHAN DUTT: I must express my gratification at finding that the Hon'ble Minister has tried to do at least some justice to the community for whom I pleaded only a few minutes

ago. Well, Sir, I have certain other amendments which I intended to move in spite of the fact that I know that they would not be accepted by the House, especially in view of the mentality revealed by some of my best friends from the Muhammadan community. Sir, I take this opportunity to remind Khan Bahadur Azizul Haque that his version of nationalism is not acceptable to this side of the House. Sir, if my friend calls himself the best nationalist in this Council——

Mr. PRESIDENT: I think you need not labour that point.

Rai Bahadur Dr. HARIDHAN DUTT: I myself was reluctant to refer to this matter, but I would appeal to the House to see that when they talk of nationalism they ought to remember that in India if we have nationalism there should not have been any question of Hindus or Muhammadans.

Mr. PRESIDENT: You had better give up that point.

Rai Bahadur Dr. HARIDHAN DUTT: Giving up that point, Sir, I find that the *Shias*, however late, have at last received some consideration and that justifies my making this remark that the conscience of the people to whom this Bill was originally referred has now responded to what I call justice to the *Shia* community. Because I find that, I do not want to press any other motions that stand in my name, the object of which was to secure some justice for the *Shia* community.

Maulvi ABDUL GHANI CHOWDHURY: I am ready to accept this amendment, Sir, if the House agrees to do so.

Khan Bahadur Maulvi AZIZUL HAQUE: May I suggest a drafting alteration, Sir? My difficulty is that as the Hon'ble Minister's draft now stands, it has the effect that these *Shia* members will be a sort of permanent members of the Board. If so, would it be necessary when a *Sunni* endowment is considered to call the *Shia* members? Instead of that we should rather have a draft by which the Commissioner of the Board who will be the Chairman will be authorised to call those members who are nominated for that purpose only, just to avoid confusion. It is a matter for legal advice, and I simply draw the Hon'ble Minister's attention to this.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I think the drafting is quite clear. The *Shia* members shall be members of the Board solely in respect of *Shia* endowments created by *Shias;* that is to say, when other *wakfs* are being considered, they will not be called in as members.

Mr. PRESIDENT: You will no doubt frame rules to make such arrangement operative.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Perhaps so, Sir. But as it is, the drafting seems to me to be quite all right.

The motions of the Hon'ble Minister were then put and agreed to.

Maulvi MUHAMMAD HOSSAIN: I beg to move that in clause 6(2) (a), in line 2, after the word "whom" the word "only" be inserted, and in the same line after the word "hnd" the word "only" be inserted.

My object in moving this amendment is only to make the meaning clearer and in order to do that I beg to move this amendment.

Maulvi ABDUL GHANI CHOWDHURY: I beg to accept the motion if the House so agrees.

The motion was put and agreed to.

Maulvi ABUL QUASEM: I beg to move that in clause 6 (2) (b), line 1, for the word "two," the word "three" be substituted.

Sir, clause 6 (1) relates to the period of three years only from the commencement of this Act and the establishment of the Board and clause 6 (2) relates to a permanent arrangement. Sir, for the present a transitory provision is being made for three years; two members will be elected by the members of the Legislative Council from amongst the Muslim members. At present the Bengal Legislative Council consists of 140 members of whom about 35 are Muslims; but in the new constitution the number of Muslim members will be about thrice as many and the Council also will be very much larger than it is now. So I think two members will be quite inadequate, when the Council has been enlarged under the new constitution. I therefore propose that in the permanent constitution of the Board there should be three members elected from the Legislative Council, and I commend my amendment to the acceptance of the House.

The motion was put and agreed to.

Maulvi ABUL QUASEM: I beg to move that in clause 6 (3), line 2, for the words "either of the electoral body," the words "any electoral body" be substituted.

Sir, this is merely a verbal amendment. As the language now stands in sub-clause (3) of clause 6, it is this: "if by such date as the Local Government may fix, either of the electoral bodies referred to in sub-section (1) or sub-section (2) fails to elect a person to be a member of the Board, etc." But, Sir, there is only one electoral body in sub-clause (1) of clause 6; so the words "either of the electoral bodies" cannot be correctly referred to in sub-clause (1). There are two electoral bodies in sub-clause (2) of clause 6, and the words correctly apply to it. So my amendment will obviate this incorrect application, and I think there should not be any objection to accepting it.

Maulvi ABDUL GHANI CHOWDHURY: I am prepared to accept the amendment.

The motion was put and agreed to.

The motion that clause 6, as amended in Council, stand part of the Bill was then put and agreed to.

Clause 7.

Kazi EMDADUL HOQUE: I beg to move that to clause 7, the following be added, namely:—

"and a staunch follower of the *Shariat*."

I know, Sir, that I shall be greeted with loud laughter when I rise to move this motion. In a House like this I cannot expect any other treatment than this from gentlemen who adorn these benches; any other treatment than jeers and sneers to a man like a staunch follower of the *Shariat*. I do not aspire to be a member of the Board myself, but I would surely like that men like my friend the good Tamizuddin Khan should be there. Sir, some of my friends are jocosely asking me what the standard is by which to determine who is a staunch follower of the *Shariat*. Is it the length of the beard which a man has? Surely, Sir, the beard is one of the tests; there is no doubt that the beard is the outward sign of a Mussalman, and for the matter of that according to my estimation my friend Tamizuddin Khan is a staunch follower of the *Shariat* and he is the proper man to be on the Board. Sir, I should have felt hesitation in bringing forward a motion like this had not clause 7 been introduced. Sir, why do my friends laugh? Section 7 says that every member of the Board shall be a person professing the Mussalman faith. Why should there be this limitation? Why should every member of the Board be a Mussalman? Could not a man belonging to any other faith act as a member of this Board? What is the objection? Is no other man fit to be on the Board? Is it prohibited in the *Shariat* that a non-Moslem cannot act as a member of the Board or as a *mutwalli*? I submit that certainly there is nothing like this in the *Shariat*. The *Shariat* permits any man having the average qualification to deal with a matter like the one in view—to be a *mutwalli* and to be a member of the Board.

(Here the Council adjourned for 15 minutes.)

After adjournment.

Kazi EMDADUL HOQUE: Sir, one cannot claim any monopoly of religion and one cannot claim any monopoly of Islamic knowledge. We, the Mussalmans, even cannot claim any monopoly of Islamic laws and practices. I think that Dr. Naresh Chandra Sen Gupta

and Mr. Narendra Kumar Basu can deal with Islamic questions more ably than many of us. I do not understand why non-Muslims of the calibre of the gentlemen I have cited should be excluded from the Board.

(At this stage, Mr. Sahana pointed out that there was no quorum. The quorum bell being rung, it was found that there was a quorum and the Council proceeded with the discussions.)

(At this stage the Hon'ble the President vacated the Chair and Khan Bahadur Muhammad Abdul Momin took the Chair.)

Maulvi SYED NAUSHER ALI: On a point of order, Sir. Since you have been elevated to the Chair, what will happen to your amendment?

Mr. CHAIRMAN: I shall not move it.

Kazi EMDADUL HOQUE: As I was telling this House, Sir, that we, Muhammadans, cannot claim any monopoly of Islamic law and practices. I submit, Sir, that the exclusion of the distinguished lawyers whom I have named will be detrimental to the cause of the Muhammadans in general. My friends seek to omit such non-Muslims, because the requisite qualification of a candidate according to them is that he must be a person professing, though not following, the Muslim faith. The clause expressly states that every member of the Board shall be a person professing the Mussalman faith, and there is no going back upon it. Now if you want to restrict the membership of the Board on communal lines why do you not then take good Mussalmans instead of those who merely profess the Musslaman faith? Do you mean to say that Maulana Abu Bakr Siddique and Maulana Abul Kalam Azad or men like them will not be fit persons for appointment on the Board. (Mr. H. S. SUHRAWARDY: "No, they will not be.")

Mr. CHAIRMAN: Will you please address your remarks to the Chair?

Kazi EMDADUL HOQUE: I bow down to your ruling, Sir. I think, Sir, that these Muslim divines whose names I have just now mentioned are very competent persons, and as they are well versed in Islamic religion and Islamic law their appointment to the Board will undoubtedly be a valuable acquisition. For what will the members of the Board do if they do not decide questions according to the *Shariat*? I submit, Sir, the members of the Board will have to decide the questions of Islamic law according to the *Shariat*. They will

have to decide whether a particular object on which they propose to spend money is charitable or not. My nominees, therefore, shall be the best persons to decide this and such other points. We, Sir, who will naturally be outside the Board have to rely on secondhand information. Most of us do not know Arabic thoroughly and have to rely on translations of Arabic texts. Therefore, Sir, I submit that the eminent Moslem divines whom I have named are the best and the fittest persons to interpret questions of Islamic law and accordingly are worthy to have seats on the Board. I want to see them on the Board, because the purpose of the *wakf* will then be fully and literally fulfilled. They will not be diverted from the path which has been chalked out from time immemorial. When I find that some of my Muslim friends want to restrict the membership to Mussalmans only, I am tempted to request them to restrict it to the true Mussalmans. And who are the true Mussalmans? What is the standard by which to judge whether a person is a true Mussalman or not? Well, according to the opinion of some of my friends the standard constitutes of a long beard only, but this as I have said is merely an outward symbol. The knowledge of *Kalamas* and the saying of prayers five times a day, the fasts, the giving of poor rates, and the performance of *Hadj* when obligatory are the true tests, but what an irony of fate it is that by these standards people are not nowadays judged whether they are true Mussalmans or whether they are the followers of the *Shariat*. Now as I judge adherents of *Shariat* by the sterling qualities they possess I am not satisfied unless I see that my amendment finds approbation at the hands of the member in charge of the Bill.

Maulvi SYED MAJID BAKSH: Mr. President, Sir, the rather long speech which the mover of this amendment has made tempts me to question myself and my hon'ble friends as to the definition of the word "Mussalman." Sir, you must be aware that the Mussalmans have no obligation under the *Shariat* to wear a long beard. My friend says that the beard is merely a symbol. I fully admit his point, but I should like to point out to him that the beard is grown in imitation of the practice of the prophet, which I submit is not at all a part of the *Shariat*. Is my friend aware that the growing of long hair is also another injunction? As regards fast, giving of alms and the performance of *Hadj*, I might inform the House that these are necessary in order to make a Mussalman a staunch follower of the *Shariat*. (Here the member quoted some Arabic text.) The *Shariat* is so liberal that it does not require anyone to observe any of these formalities. My impression is that the *Shariat* is not so narrow as to require the observance of these formalities.

As regards the beard, Sir, you will remember that when you were a member of the Legislative Assembly you had it, and further that

when you were the District Magistrate of Jessore you shaved your beard and that I composed a poem on that occasion with these words:—

"Beards of great men all remind us,
We can make our beards sublime
And shaving leave behind us
Wisdom on the sands of time."

Mr. H. S. SUHRAWARDY: Are we really serious when we discuss this proposition? It seems to me that the Kazi Sahib has just put this forth to test the sense of humour of the House. Possibly the Kazi Sahib's association with certain members of the House and the party to which he belongs has taught him to ridicule Islam and to consider that beards and other things are necessary for the followers of the *Shariat*. If he is serious about it, I would earnestly appeal to the Kazi Sahib to withdraw his amendment as soon as possible. He has mentioned the names of two great devotees of Islam, Maulana Kalam Azad and Maulana Sufi Abu Bakar. Does he suggest that we should pry into the private lives of these people for the purpose of ascertaining whether they are or are not true followers of Islam? Does he suggest that we should trespass into their private chambers at night, into their secret chambers, to ascertain if they are transgressing any of the laws of the *Shariat*? Are these the things that he suggests that we should do to protect the Moslem faith? He would have to go so far as to establish a tribunal to ascertain whether a particular person is a true Mussalman or not. These are the things which we cannot do, and I would suggest that the Kazi Sahib should withdraw his motion.

Maulvi Abdul Hamid Shah made a speech in vernacular, of which the following is a translation:—

Mr. President, the question of putting properties under a Wakf Trust is entirely a concern of the Moslems. It will not be reasonable to have on the Board that is to be appointed for administering the Wakf Trust any member who is not a Moslem himself. But Maulvi Kazi Emdadul Hoque has brought forward a proposal for placing a staunch follower of the *Shariat* on the Board. According to the Kazi Sahib any one having a long beard may be taken as a staunch follower of the *Shariat*. But I request the Kazi Sahib to shelve his arguments now and to use his discriminatory acumen at the time when members who are to serve on the Board of Wakfs will be appointed.

With these words I oppose the motion of the Kazi Sahib.

The motion was put and lost.

The motion that clause 7 stand part of the Bill was put and agreed to.

Clause 8.

Maulvi ABUL QUASEM: Sir, with your permission I should like to move this amendment in different words. I move my short notice amendment which runs as follows:—

"That to clause 8, the following sub-clause be added, namely:—

'(*4*) If any *mutwalli* as such appointed, or any member of the Bengal Legislative Council as such elected, to be a member of the Board ceases to be a *mutwalli* or a member of the Bengal Legislative Council, as the case may be, the Local Government shall by notification in the *Calcutta Gazette* declare his place to be vacant:

Provided that an elected member of the Board whose place is declared vacant under this sub-section shall continue as a member of the Board until his successor is elected.' "

Sir, the amendment I have just moved speaks for itself. It is necessary and reasonable and I commend it to the acceptance of the House.

The motion was put and agreed to.

The motion that clause 8, as amended in the Council, stand part of the Bill was put and agreed to.

Clause 9.

The motion that clause 9 stand part of the Bill was put and agreed to.

Clauses 10 and 11.

The motion that clauses 10 and 11 do stand part of the Bill was put and agreed to.

Clause 12.

Maulvi ABUL QUASEM: Sir, with your permission I beg to move this amendment in different words. It runs thus:

"That in clause 12 in line 2, after the words 'of the Board' the words, brackets and figures 'is declared vacant under sub-section (*4*) of section 8 or' be inserted."

The motion was put and agreed to.

The motion that clause 12, as amended in Council, do stand part of the Bill was put and agreed to.

Clause 13.

Maulvi ABUL QUASEM: I beg to move that in clause 13 (*1*), line 2, after the words "elected by" the words "the members present at a meeting of" be inserted.

Sir, I have considered it necessary to put these words only to express clearly the real meaning of clause 13. Now, Sir, "a member elected by" the Board would appear to indicate that a member would be permanently elected to preside at meetings of the Board in the absence of the Commissioner. That, I think, is not the intention of this clause. If for unavoidable reasons the Commissioner is absent, then only the members who are present at a particular meeting and who form a quorum shall elect a president from amongst them. So the intention of my amendment is clear and I commend it to the acceptance of the House.

The motion was put and agreed to.

The motion that clause 13, as amended, stand part of the Bill was put and agreed to.

Clause 14.

Maulvi MUHAMMAD HOSSAIN: I beg to move that in clause 14, in line 2, after the word "faith" the following be inserted, namely:—

"and a barrister of England or Ireland or an advocate or pleader of not less than 12 years' standing or a person holding or who has held judicial office not inferior to that of an additional District Judge."

Sir, I need not explain the reasons why I move this amendment because it is self-evident from the language I have put in this amendment. I hope that the members will accept it.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I regret very much that I have to oppose this amendment because I think it is not right at this stage to limit the choice of the Commissioner to only people with legal qualifications. Sir, this is going to be an Act which will require the very best man in the community to administer, and I do not think it can be argued that the legal men are the best men in the community. I would request the House seriously to consider this question. I know that in the Legislative Council there is a tendency to send a large number of legal men to represent the community but for this Act, we want men with administrative experience who will be able to control the *wakfs* in Bengal. I certainly think that this is going to be one of the most difficult jobs in Bengal and no restriction in the choice of men should be made. We must have the best man available. It will require a large number of qualifications, *i.e.*, integrity, honesty, tact, firmness and at the same time ability in dealing with people and big men. Therefore, I would request the mover not to press this amendment and if the amendment is not withdrawn, I would ask the House to reject it.

Mr. H. S. SUHRAWARDY: I find that this qualification has been inserted by the Sir Zahid Suhrawardy Committee in section 7 where it is laid down that the President shall be a Barrister of England or

Ireland or a member of the Faculty of Advocate of Scotland or an Advocate of not less than 12 years' standing, or a person holding or who has held judicial-office not inferior to that of an Additional District Judge, and the reason is that what is required for this appointment is a certain amount of judicial temperament and a wide vision. It is obvious that I am not very much concerned with regard to this amendment, because I have not the least doubt in my mind that when Government come to appoint the Commissioner, they will certainly choose a person who has one of the above qualifications, as he will obviously be the best of the candidates.

Maulvi ABDUL GHANI CHOWDHURY: I do not know whether I should accept or oppose this amendment. In my original Bill I specified some qualifications with regard to the Commissioner of Wakfs, but the amendment, as it stands now, does not provide all those qualifications. Of course, I myself think that there ought to be some qualifications with regard to the appointment of such a high officer. Government in appointing an officer in all departments have prescribed some sort of qualifications, and there is no reason why here too there should not be any such qualifications. I, however, think that if there be a Board for the selection of the Commissioner, it will serve the purpose. Anyway, I am not going to accept the amendment.

Maulvi TAMIZUDDIN KHAN: I think I must oppose the amendment. It will be a mistake to restrict the hands of Government in the way proposed. The reasons have been given by the Hon'ble Minister. I think this amendment excludes a person who holds the position of a District Magistrate. I think it is administrative capacity that will be required to a greater extent than legal knowledge in a post like this. Therefore, I think it will not be proper to limit the scope of the section as suggested by the amendment.

Maulvi Muhammad Hossain's motion was then put and lost.

Clauses 14 and 15.

The motion that clauses 14 and 15 stand part of the Bill was then put and agreed to.

Clause 16.

Kazi EMDADUL HOQUE: I beg to move that in clause 16, in line 1, after the word "salary," the following words be inserted, namely:—

"not exceeding five hundred rupees."

Sir, clause 16 provides that the Commissioner shall receive such monthly salary as may be fixed by the Local Government, that is, the discretion is left to the Local Government to give any salary that it may like to the Commissioner. I think we should fix the maximum within

which the Local Government will be at liberty to fix the salary, and in these days one ought to accept the job on a famine rate. Rs. 500 to-day is equivalent to Rs. 5,000 a few days ago. For Rs. 500 you can have many qualified men. There are lots of scholars rotting in the streets for want of employment. If you offer Rs. 500 to begin with, you can get good scholars. If you can do without any scholar, you can have the services of a man on a much smaller salary than what I propose here.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: There has been a good deal of agitation in the country on the question of the expenses of this Board, and the expenses of the Board do not mean anything but the pay of the Commissioner and the pay of just a few peons and clerks. If it is possible for Government to spend as little as possible under these heads, there will not be much difficulty in making the whole scheme successful, but if Government like to have a very high salaried man especially for this appointment, the whole scheme may be frustrated. But I do not think that it should be Rs. 500 which is a ridiculously small amount. I would rather say that we should give Government some idea as to what we think a reasonable amount for the pay of the Commissioner. I think Rs. 1,200 to be quite enough for an appointment like this. For Rs. 1,200 I think a very decent officer can be made available. When I say this, I want to give Government an idea of the limit up to which Government should go when they appoint a man to the post. I do not mean to say that I am supporting the motion. I am simply giving an idea of the limit up to which we should go. Nor am I opposing the motion but trying to fix the maximum at Rs. 1,200.

The motion was then put and lost.

Clauses 16 to 19.

The motion that clauses 16 to 19 stand part of the Bill was then put and agreed to.

Clause 20.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in lines 3 and 4 of clause 20 for the words "and may sue and be sued in his corporate name," the following be substituted, namely:—

"and shall be the said name sue and be sued."

It is purely a verbal amendment.

Maulvi ABDUL GHANI CHOWDHURY: I accept the amendment.

The motion was then put and agreed to.

The motion that clause 20 as amended stand part of the Bill was put and agreed to.

Clause 21.

The motion that clause 21 stand part of the Bill was put and agreed to.

Clause 22.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 22, for the first proviso, the following be substituted, namely:—

"Provided that an appointment to a post carrying a monthly salary exceeding one hundred rupees shall be made by the Board."

My intention is quite clear from the amendment I have moved. I think that posts of the value of more than one hundred rupees should be filled up by the Board and not by the Commissioner.

Maulvi SYED NAUSHER ALI: I beg to support this amendment, and I would like to add that it would be better to make a little alteration in the language itself, namely:—

"Provided that an appointment the maximum monthly salary of which will exceed one hundred rupees shall be made by the Board."

I may point out that similar provisions have been made in connection with appointments under the district boards and other bodies and the language has been interpreted in various ways. Sometimes it has been interpreted to mean that for the purpose of appointment the salary would be considered as the minimum salary. Of course, that interpretation has changed now and the present interpretation is that the maximum has got to be taken into consideration. I, therefore, suggest that this amendment may be accepted with the slight alteration that I have proposed. With these remarks, I commend the amendment to the acceptance of the House.

Mr. H. R. WILKINSON: I beg to oppose this amendment. We can safely leave the appointment of such people to the Commissioner with the approval of the Board. We find that in the Calcutta Improvement Act Rs. 300 is the limit up to which the Chairman can appoint without the approval of the Board.

Mr. CHAIRMAN: Are you opposing the entire amendment?

Mr. H. R. WILKINSON: Yes.

Maulvi ABDUL GHANI CHOWDHURY: I also beg to oppose the amendment.

Maulvi Tamijuddin Khan's motion was then put and lost.

Adjournment.

The Council was then adjourned till 3 p.m., on Wednesday, the 21st February, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on the 21st February, 1934, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 100 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Realisation of collective fines from Chittagong and Midnapore.

*77. **SETH HUNUMAN PROSAD PODDAR:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state whether it is a fact that notices for collective fines have again been issued on two villages in the district of Chittagong?

(*b*) Is the Hon'ble Member aware—

(*i*) that there has been no further trouble of any sort in that place; and

(*ii*) that the leaders of the late movement have been all secured and are undergoing various terms of imprisonment?

(*c*) If the answers to (*a*) and (*b*) are in the affirmative, what are the reasons which led Government to take these steps.

(*d*) Will the Hon'ble Member be pleased to state whether it is a fact that the fines are levied on Hindus only?

(*e*) Have the Government considered the possibility that a suspect might be kept in concealment by persons belonging to any religion?

(*f*) If the answers to (*d*) and (*e*) are in the affirmative, what are the reasons for this invidious distinction?

(*g*) Will the Hon'ble Member be pleased to state the amount of collective fines realised till now from Chittagong and Midnapore and how the money thus realised from the Hindus has been spent or is likely to be spent in the near future?

MEMBER in charge of POLITICAL DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) Collective fines were imposed on two villages in Chittagong district in November last.

(*b*) (*i*) and (*ii*) No.

(*c*) The member is referred to notifications Nos. 13278 P. and 13279 P. of 27th November, 1933, copies of which have been placed on the library table.

(*d*) The fines have been levied only on those sections of the community to which the persons carrying on terrorist activity belong.

(*e*) Yes.

(*f*) Certain classes of persons are exempted from liability to pay any portion of the fine not on communal grounds but on the ground that they cannot be held responsible for the conditions which led to the imposition of the fine.

(*g*) If the question relates to the districts of Chittagong and Midnapore the amounts according to the latest figures are as follows: Chittagong—Rs. 78,631-9. Midnapore—Rs. 6,658-15.

The sums realised have been credited to Government. In Chittagong a certain amount has been paid as compensation to those who suffered injury or loss from terrorist activity.

Mr. NARENDRA KUMAR BASU: Will the Hon'ble Member be pleased to state what is the percentage of population in Chittagong with regard to Hindus and Muhammadans?

The Hon'ble Mr. R. N. REID: I am sorry I cannot answer that off-hand.

Mr. NARENDRA KUMAR BASU: Will the Hon'ble Member be pleased to state whether any portion of these fines have been realised from non-Hindus?

The Hon'ble Mr. R. N. REID: Not the fines mentioned here.

Mr. NARENDRA KUMAR BASU: Will the Hon'ble Member be pleased to state whether it is possible for any village which is not composed mostly or exclusively of Hindus to keep in concealment the alleged terrorists without the knowledge of the majority of population?

The Hon'ble Mr. R. N. REID: That is a very difficult conundrum. The answer may possibly be "Yes." It may equally possibly be "No."

Mr. NARENDRA KUMAR BASU: Have any inquiries been made to find out whether non-Hindu population of these villages were privy to the movement of the alleged terrorists and suspects?

The Hon'ble Mr. R. N. REID: I made no particular inquiry in connection with this question.

Mr. SHANTI SHEKHARESWAR RAY: With reference to (*d*), what does the Hon'ble Member mean by the expression "those sections of the community"?

The Hon'ble Mr. R. N. REID: Exactly what the dictionary meaning of the words imply.

Mr. SHANTI SHEKHARESWAR RAY: What does the Hon'ble Member mean when he refers to a particular section of the community —does he refer to the age, say, between 18 and 30.

The Hon'ble Mr. R. N. REID: It has no reference to the age.

Dr. NARESH CHANDRA SEN GUPTA: With reference to (*f*), what is the basis and on what inquiry the Hon'ble Member fixes the responsibility for the conditions which led to the imposition of the fines on the persons who have been fined?

The Hon'ble Mr. R. N. REID: Suitable inquiries were made by the local officers.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to state whether the fines have been imposed on no other considerations than that they simply belonged to the Hindu community?

The Hon'ble Mr. R. N. REID: Sir, the answer is already there.

Babu SATISH CHANDRA RAY CHOWDHURY: What are the conditions for which the entire class is made responsible?

The Hon'ble Mr. R. N. REID: If the Hon'ble Member is referring to the conditions which led to the imposition of the fine, the conditions under which the terrorist outrage is possible.

Maulvi ABDUL KARIM: Is it not a fact that in one *thana* at least (Goakhali) collective fines were realised also from the Mussalmans.

The Hon'ble Mr. R. N. REID: That is a fact; but this did not occur in the cases to which this question relates.

Audit work of the district boards in Bengal.

*78. **Maulvi ABUL QUASEM:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state—

(*i*) whether the returns and certificates required to be sent to the Accountant-General, Bengal, under the Account Rules were duly and regularly sent by each district board during each of the last three years; and

(*ii*) the opinion of the Accountant-General, Bengal, about the audit work of the Finance Committee of each district board during each of the last three years?

(*b*) Are the Government considering the desirability of having the whole of the accounts of the district boards audited by the Examiner of Local Accounts as in the case of municipalities and of taking necessary steps in that behalf?

MINISTER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (*a*)(*i*) Not always.

(*ii*) Government do not consider that they would be justified in requesting the Accountant-General to undertake the laborious task of examining, and expressing an opinion upon the work of the Finance Committee of every district board in Bengal during these years.

(*b*) The question does not arise, because the proportion of the district board accounts audited by the Examiner of Local Accounts is already, generally speaking, the same as that of the Municipal Accounts.

Mr. MUKUNDA BEHARY MULLICK: Might I inquire whether it is not a part of the duty of the Finance Committee to do the auditing of the accounts of its district board regularly?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, Sir.

Mr. MUKUNDA BEHARY MULLICK: Will the Hon'ble Minister be pleased to state if it is not a fact that the Accountant-General, Bengal, is the expert adviser of Government with reference to the accounts of the province as a whole?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, Sir.

Mr. MUKUNDA BEHARY MULLICK: Is it not desirable that the Accountant-General, Bengal, or some other officer, appointed by him to see to the accounts of the district board regularly to ensure correct auditing of its accounts?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: No doubt that should be an ideal state of affairs; but it would involve a very large expenditure. If the local bodies are prepared to find the money, Government will certainly have no objection.

***Mr. MUKUNDA BEHARY MULLICK:** With reference to (*a*) (*i*), if these things are not always properly done whether any step is taken by Government, to ensure statutory provision?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, Sir. Circulars were issued and circulars are being issued from time to time to impress on the district boards the desirability of the compliance with the statutory provisions of the law.

Khan Bahadur Maulvi AZIZUL HAQUE: Is it not a fact that the constitution of the Finance Committee has only been recently changed?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, I believe so, under the amended Local Self-Government Act.

Maulvi ABUL QUASEM: With reference to answer (*ii*), if it is not a fact that every year an opinion is expressed on the result of the auditing done by the Examiner of Local Accounts with respect to the accounts of the district boards including the work done by the Finance Committees?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: The opinion is generally expressed but not on the Finance Committee of every district board.

Dinajpur railway station.

***79. Maulvi HASSAN ALI:** (*a*) Is the Hon'ble Member in charge of the Public Works (Railways) Department aware that at the Dinajpur railway station the cooking shed of new passengers' waiting room and the privy of the third and inter-class female waiting room are very close to each other?

(*b*) If the answer to (*a*) is in the affirmative, what precaution is there for sanitation purposes?

MEMBER in charge of PUBLIC WORKS (RAILWAYS) DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*a*) The information of this Government is that the tea stall in the north-east corner of the third class waiting hall is situated not far from the latrine of the ladies' waiting room, but that it is screened therefrom by a high wall.

(*b*) The Sanitary Committee regularly visit the station.

Kazi EMDADUL HOQUE: Are the Government considering the desirability of removing the privy?

The Hon'ble Mr. J. A. WOODHEAD: It is not a matter for decision by Government, Sir.

UNSTARRED QUESTION

(answer to which was laid on the table)

Bengal Engineering College, Shibpur.

39. Maulvi ABDUL GHANI CHOWDHURY: (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to lay on the table a statement showing the names of permanent mistries of the Bengal Engineering College, Shibpur, with dates of their being made permanent and their respective position in the cadre of their services?

(*b*) Will the Hon'ble Minister be pleased to state—

(*i*) whether they were taken from outside at the time of making them permanent or were members of the mistry staff of the said college; and

(*ii*) whether the policy of the Government since 1917 to keep the mistry staff of the Ashanulla School of Engineering, Dacca, on a temporary basis, is followed in the case of the mistries of the Bengal Engineering College, Shibpur?

MINISTER in charge of EDUCATION DEPARTMENT (the Hon'ble Mr. Khwaja Nazimuddin): (*a*) and (*b*) The member is referred to the reply given on the 14th March, 1933, to the unstarred question by Rai Bahadur Rebati Mohan Sarker on the same subject.

GOVERNMENT BUSINESS.

The Budget for 1934-35.

The Hon'ble Mr. J. A. WOODHEAD presented the Budget of the Government of Bengal for the year 1934-35.

The Hon'ble Mr. J. A. WOODHEAD: At the conclusion of my budget speech last year I described our present financial position as not one to encourage feelings of optimism, and unfortunately the story I have to tell this year discloses no improvement in the immediate financial position of the province. Judged by the figures of the budget estimates, the financial position is worse instead of better, and if there were no hope of our claim to a revision of the existing financial settlement being conceded the outlook would be one of the utmost gravity.

Although the depression in trade and commerce which had held the world in its grip since the end of the year 1929 still persists, the year 1933-34 has afforded some indication of an improvement in the general economic position. In the United Kingdom there has been a definite increase in industrial activity, and the improvements in railway earnings and in the export figures of merchandise are signs of some revival in trade in India also. Unfortunately these indications of an improvement in trade and commerce have not as yet been accompanied by an increase in the prices obtained by the cultivator in Bengal for his principal agricultural products, jute and rice. The price of raw jute during the harvest season of 1933 reached the lowest level yet recorded. During the harvest season of 1931 jute prices benefited by the departure of the United Kingdom from the gold standard, and in 1932 a short period of higher prices coincided with the harvest season of that year. In 1933 unfortunately, although prices rose during the months of April and May, they fell again from July and exhibited their greatest weakness during the period August to October, just at the time when the major portion of the crop is placed on the market. The prices of paddy and rice fell sharply in the early months of the year 1933, and in the month of March the price of paddy touched the very low level of Rs. 1-7-7 a maund. The prices of both jute and rice have since recovered, but they are still very low, and although there are not as yet any indications that the year 1934-35 will be marked by a considerable improvement in the price level of these two primary products, it is to be hoped that prices during the coming financial year will not again fall to the low level reached in 1933. The unremunerative prices received by the cultivators for their produce have, as was only to be expected, prevented any recovery in our receipts; in fact the estimated yield in 1933-34 from our five main heads of revenue, viz., Land Revenue, Excise, Stamps, Forests and Registration, is only Rs. 763½ lakhs, a figure lower than that for the year 1932-33 by 23½ lakhs and no less than 241¾ lakhs below the receipts for the year 1929-30, the year immediately preceding the onset of the present trade depression.

Last year I drew attention to the heavy additional expenditure thrown on the revenues of the province by the civil disobedience and terrorist movements during these years when the revenue position demands that every economy should be made. Unfortunately this expenditure, which is unavoidable if law and order are to be maintained —and law and order must be maintained no matter what the cost— continues to be a very heavy burden on our resources. In the year 1933-34, this expenditure according to the revised estimates is Rs. 53¼ lakhs, and the budget for 1934-35 makes provision for Rs. 52 lakhs. The decrease of 1¼ lakhs is more than accounted for by expenditure amounting to Rs. 3,68,000 during 1933-34 on the construction of the Jail at Deoli. The figures for the years 1931-32 and

1932-33 are Rs. 21½ lakhs and Rs. 47 lakhs respectively, and by the close of the year 1934-35 the promoters of anarchy will have involved the province in expenditure amounting to Rs. 173¾ lakhs. There appears to be little hope that this burden will be reduced substantially in the immediate future, and I feel sure every right-thinking person will agree that it is nothing short of a catastrophe that these movements subversive of law and order have placed such a large additional burden on the resources of the province.

Shortly before the end of the last session members of the Council were supplied with a statement showing the decisions taken by Government on the recommendations of the Retrenchment Committee up to the 31st July 1933, and to-day I have circulated to members a revised statement incorporating the decisions reached up to the 31st January, 1934. According to this statement the ultimate savings as a result of the decisions so far taken on the Committee's proposals amount to approximately Rs. 40½ lakhs. But these figures do not, of course, give a complete picture, or anything like a complete picture, of the reductions in expenditure that have been effected since the onset of the depression. To make this clear I propose to compare the revised estimates for 1933-34 with the actuals of 1929-30. The estimated expenditure on revenue account in 1933-34 is Rs. 10 crores 94½ lakhs; but to this, for the purposes of my comparison, should be added approximately Rs. 18¾ lakhs on account of savings from the emergency cut in pay. The figure we should take for 1933-34 is therefore Rs. 11 crores 13¼ lakhs. The actuals for 1929-30 were Rs. 11 crores 33½ lakhs. On this calculation, therefore, our expenditure in 1933-34 shows a reduction of Rs. 20¼ lakhs. But this is not all; a number of adjustments have to be made in order to obtain truly comparable figures. These with one exception are shown in Appendix I which is attached to the printed copy of this speech. That Appendix shows that Rs. 21¼ lakhs should be deducted from the revised estimates for the purpose of the comparison. The further adjustment, not included in that statement, which I have reserved for special mention, is the additional expenditure thrown on the province by the terrorist movement. In 1933-34 this amounts to no less than Rs. 53¼ lakhs and this also should be deducted for our present purposes. The result of these deductions is that the comparable figures for expenditure on revenue account in 1929-30 and 1933-34 are Rs. 11 crores 33½ lakhs and Rs. 10 crores 38¾ lakhs respectively; in other words, as compared with 1929-30, the reduction in expenditure effected is no less than Rs. 94¾ lakhs. This figure, I suggest, is a measure of the Bengal Government's endeavours to reduce expenditure, and is one which I commend to all those who desire to form a correct estimate of the reductions actually achieved. The Retrenchment Committee also made recommendations in regard to reductions in the scales of pay. Work on the preparation of revised scales of pay for the large majority of the

services and posts under the rule-making power of the local Government is almost complete, and it is Government's intention that the new scales of pay should be brought into effect from the 1st April 1934.

The estimated expenditure on revenue account in 1934-35 amounts to Rs. 11 crores 29 lakhs as against the revised estimate for 1933-34 of Rs. 10 crores 94½ lakhs and the actuals for 1932-33 of Rs. 10 crores 68 lakhs. A point that will strike anyone who compares these figures with the actuals for the year 1930-31 is this, that, although expenditure fell by Rs. 73 lakhs between 1930-31 and 1932-33, it is now on the increase in spite of the retrenchments effected. The budget estimates, in fact, provide for an expenditure in 1934-35, which exceeds the actuals of 1932-33 by Rs. 61½ lakhs. In the hope that it will assist the House to a correct appreciation of the position I have brought together in Appendix II attached to the printed copy of this speech the main items which have contributed to an increase in expenditure in 1934-35 as compared with 1932-33. The Council will notice that, even without taking account of increased expenditure owing to increments in time scales, these items, totalling Rs. 71 lakhs, not only account for the difference of Rs. 61½ lakhs, but also leave a balance of Rs. 9½ lakhs, which balance connotes savings in other directions. The point I wish to stress, however, is that almost the whole of this figure of Rs. 71 lakhs is accounted for by items which are inescapable. Items 1 to 7 in Appendix II are examples of what I mean, and they alone account for nearly Rs. 61½ lakhs. There are other items in the same category, and those which are really new amount to a very small proportion of the total sum. There is another point which should be borne in mind, and that is that a comparison between the budget estimate of expenditure of one particular year and the actuals of a previous year is not a comparison of like with like. The total actual expenditure of the province is normally less than the total expenditure according to the budget estimates, and the Council will doubtless recognize that a reduction of one *per cent.* on a total expenditure of Rs. 11 crores amounts to the not inconsiderable figure of Rs. 11 lakhs.

I now turn to the details of the estimates. As in the past, I shall endeavour to confine myself to the salient features, but if any member requires further information on any point which he cannot find in the estimates themselves or in the financial statement which accompanies them, both Mr. Gladding and I will be pleased to see him either here or in Writers' Buildings, while my colleagues will be glad to assist in respect of the departments under their several charges.

1932-33.

The year 1932-33 opened with a balance of Rs. 13,56,000, and in the revised estimates the total receipts on revenue and capital account,

inclusive of the opening balance but exclusive of the advance to be taken to cover the deficit, were estimated at Rs. 10,24,10,000. The actual receipts of Rs. 10,26,49,000 were in excess of anticipation by Rs. 2,39,000, a decrease of Rs. 4,70,000 under receipts on revenue account being more than offset by an increase of Rs. 7,09,000 in the receipts on capital account. On the expenditure side the total actual expenditure of Rs. 11,12,70,000 on revenue and capital account was less by Rs. 16,96,000 than the revised estimate of Rs. 11,29,66,000. The net result was that, after providing for a closing balance of Rs. 12,93,000 for the Famine Relief Fund, the deficit on the year stood at Rs. 99,47,000, an improvement of Rs. 18,87,000 over the figure anticipated in the revised estimates.

1933-34.

In the budget estimates the receipts on revenue account were placed at Rs. 9,11,53,000. This was at the time considered a conservative figure, but unfortunately it is now anticipated that the actuals will be lower than this figure by no less than Rs. 14,97,000, and in the revised estimates the receipts on revenue account have been placed at Rs. 8,96,56,000, the lowest figure yet reached. Our revenue receipts this year will reach a new low level, a level almost Rs. 90 lakhs below even that of the year 1922-23. The heads of Salt and Excise account for Rs. 11 lakhs of the total fall of about Rs. 15 lakhs. The decrease of Rs. 3½ lakhs under Salt is due to the reduction in the additional salt duty by annas 2 per maund. When the budget was prepared, it was hoped that the rapid and persistent fall in the excise revenue which has been a feature of our revenue position since 1930-31, the first year of the depression, would be arrested, and the budget estimate therefore, although it did not provide for any improvement in the excise revenue, did not anticipate any further fall. Unfortunately this hope has not been fulfilled, and the revised estimate shows a large fall of 7½ lakhs as compared with the budget figure. This continued fall in the revenue from Excise is one of the most disturbing features of the revenue position, and members of the Council will readily appreciate the serious effect of this loss of revenue on our finances when I say that our excise revenue has fallen by Rs. 95 lakhs since 1929-30. On capital account the revised estimate anticipates a fall of Rs. 13,66,000 as compared with the budget figure. Out of this Rs. 13,66,000, Rs. 9,30,000 is due to the omission, with the permission of the Government of India, of any provision under the head "Appropriation for reduction or avoidance of debt." The balance is mainly due to the New Howrah Bridge Commissioners having repaid a loan of Rs. 2,75,000 in March of last year instead of as was expected in the present financial year and to the decision of the old Howrah Bridge Commissioners not to take a loan this year from the local

Government. Taking both revenue and capital receipts together the revised estimates provide for a total revenue, exclusive of the advance to cover the deficit, of Rs. 9,51,71,000, a figure which is lower by Rs. 28,63,000 than that anticipated when the budget was framed. This fall in revenue has, however, been more than offset by a reduction in expenditure; it is now anticipated that the total expenditure on revenue and capital account will be Rs. 57,71,000 less than the budget figure. Almost every head under expenditure from ordinary revenue shows savings, and in the aggregate these savings amount to Rs. 36,14,000. Under the capital heads, there is a decrease of Rs. 21,57,000, Rs. 9,30,000 of which is the counterpart of the Rs. 9,30,000 referred to above. The balance is mainly due to the expenditure during the year on the construction of the Damodar Canal being less by Rs. 3,88,000 than originally estimated and to the decision of the Commissioners of the Old and New Howrah Bridges not to take the loans of Rs. 2,47,000 and Rs. 5,22,000 respectively which they anticipated would be required when the budget was prepared.

The net result as regards the present year is that we now expect to close with a deficit of Rs. 1,80,17,000, instead of Rs. 2,09,66,000 as originally estimated.

1934-35.

I now turn to the coming year. The Council will find explanations of the chief variations in the financial statement, and I shall only deal with the main points. Although, as I have said, there are some indications of an improvement in trade, there is as yet no indication of a general revival such as would warrant us taking an optimistic view of revenue prospects during the coming year. We have, however, ventured to hope that the excise revenue will show some improvement over the very low figure reached this year and that the receipts from stamps will be slightly better. After allowing for an improvement of 8½ lakhs under Excise and 6 lakhs under Stamps, the total receipts on revenue account in the coming year have been placed at Rs. 9,07,47,000 as against the revised estimate of Rs. 8,96,56,000 for the present year, an increase of approximately Rs. 11 lakhs. The receipts on capital account call for no special comment. Exclusive of the advance to be taken to cover the anticipated deficit, the estimate of the total receipts on revenue and capital accounts stands at Rs. 9,64,05,000.

As regards expenditure, the estimates provide for an expenditure on revenue account of Rs. 11,29,17,000. The increase of Rs. 34,68,000 over the revised estimate for the present year is explained in Appendix III attached to the printed copy of this speech. The Council will notice that, of this increase of just over Rs. 34½ lakhs, increased interest and pensionary charges and additional expenditure on roads from the Central Road Development Fund and from the proceeds of the

taxes on motor vehicles account for approximately Rs. 20 lakhs. The balance is spread over a large number of budget heads and with the exception of one or two small items does not involve Government in any new recurring commitment. A provision of Rs. 1,89,000 has been made in connection with the Bhangore Khal and the Kristopur Canal. The object of this expenditure is twofold, first silt clearance in the Bhangore Khal, an important navigable channel, and secondly improvements to the Kristopur Canal in order to prevent the land to the north of that canal being flooded during the rains. The Council will no doubt be glad to see that Rs. 40,000 has been provided for the establishment of five Land Mortgage Banks, Rs. 45,000 for grants for the improvement of non-Government colleges and Rs. 20,000 as an addition to the current year's grant for the kala-azar campaign. During the last few years every economy has been exercised in regard to expenditure on repairs to provincial roads and buildings, and in view of these enforced economies it has been thought prudent to provide an increased provision of Rs. 4 lakhs for repairs during the coming year. Fortunately the earthquake, which has had such disastrous effects in the neighbouring province of Bihar and Orissa, has caused little damage in Bengal outside the Darjeeling district. In that district the damage to Government property is, however, considerable and the Council will notice that Rs. 2½ lakhs have been provided as a reserve for expenditure in respect of such damage. The Public Works budget also contains a provision of Rs. 77,000 in connection with the construction of a new building for the Belliaghata police-station. This expenditure is unavoidable as the station is at present located in a hired house which is under acquisition by the Improvement Trust and other suitable rented accommodation is not available in the locality.

As I said at the beginning of this speech, if there were no hope of our claim to a revision of the existing financial settlement being conceded, the situation would be one of the utmost gravity. The situation would, in fact, demand immediate remedial action of the most drastic character, action which, I can assert without fear of contradiction, would be disastrous to the general welfare of the province. The budget estimates for 1934-35 disclose a deficit on revenue account of approximately 2¼ crores against revenue receipts of just over 9 crores; in other words, the anticipated deficit amounts to about 25 *per cent.* of our present income. I trust it will be admitted that it would not be possible with our present sources of revenue to bridge by additional taxation this enormous gap between expenditure and revenue. On that point, I feel convinced, there can be no difference of opinion. Our existing sources of revenue are admittedly inelastic and not capable, till the prices of our main agricultural products, jute and rice, have risen to more remunerative levels, of yielding any substantial addition to our present income. Again, as regards new sources of revenue we have the authority, if

authority is required, of the Percy Committee, who came to the conclusion that such new sources as appear to be within the sphere of practical politics in the immediate future cannot be relied upon to yield any substantial early addition to provincial revenues. I do not wish to suggest that under the present constitution there are no new sources of revenue which we could tap in order to improve our revenue position, but what I do maintain is that there is no new source of revenue at present available which will yield a substantial addition in the immediate future to our revenues. Under the existing financial settlement, therefore, a balanced budget for 1934-35 could only have been achieved by further reducing expenditure to the extent of roughly Rs. 2¼ crores. I draw the attention of the House to the fact that this figure is nearly equal to the total provision (Rs. 251½ lakhs) made in the budget for the departments of Education, Medical, Public Health, Agriculture and Industries; and I assert that retrenchment of anything approaching this magnitude could not have been made without either jeopardising the peace and security of the Presidency or putting the transferred departments, for all practical purposes, out of action. Can it be wondered that we have hesitated to do either of these things, or that we wait with feelings of the gravest anxiety the final judgment on our claim that this great province was unjustly treated in the financial arrangements incidental to the present constitution and should be both recompensed for that unjust treatment and given an equitable settlement under the new constitution?

The history of our endeavours to obtain an equitable financial settlement and the success which has so far attended those efforts are known to all, and I do not propose to go over that ground again. The White Paper recognises that Bengal has a valid claim in respect of the revenue from the export duty on jute, and proposes that at least half of that revenue shall be allocated to the jute-producing provinces. We welcome this recognition of our claim to this revenue, but we still maintain that, although it may be necessary to make some contribution from this source to meet the necessities of the Centre, the export duty on jute should be a provincial source of revenue. We have continued to press this view. In my budget speech last year I said that the Local Government in expressing their views on the report of the Percy Committee had raised the question whether the new provincial Government should be saddled with the burden of current overdrawals. This is a matter to which we attach great importance and one which we have continued to press. We consider it of paramount importance that the new Government from the inception of the reformed constitution should not be loaded with a mass of unproductive debt. It has been recognised that Bengal's difficulties are due to the present inequitable settlement, and further it has been recognised that we have a valid claim in respect of the revenue from jute. As I stated last year, it would therefore seem to follow that appropriate

steps should be taken to rectify the injustice of the past and to compensate Bengal for the drain to which she has been subjected. In our view an adjustment to cover the excess of expenditure over receipts on revenue account since 1930-31 would be a very modest form for that compensation to take.

Under an equitable financial settlement there is little doubt that the financial position of the province even in these days of extreme economic depression would be sound, and we have persistently maintained that the financial resources allotted to the Province under the new arrangements should be such as to permit of the development of the more beneficial activities of Government beyond the present inadequate standards. It would be disastrous if the mistake of 1921 were repeated and stagnation once again were the inevitable result of the new financial settlement. It is of paramount importance that under the new constitution the finances of the province should be placed on a sound basis, and the Council may rest assured that Government will not relax their efforts to obtain what they consider Bengal can justly claim, a financial settlement which will redress the injustice of the past and render possible the development of those constructive services the curtailment of which has been such a marked feature of the administration during the last twelve years.

APPENDIX 1.

(In thousand of rupees.)

	Actuals, 1929-30.	Revised estimates, 1933-34.	Difference.
	Rs.	Rs.	Rs.
Interest on ordinary debt : interest on loans taken to cover the deficits	.	18,14	+18,14
Reduction or avoidance of debt ..	6,79	..	−6,79
Civil Works :—			
(a) Expenditure from the Central Road Development Fund	..	8,64	+8,64
(b) Expenditure out of the proceeds of the Motor Vehicles taxes ..	.	8,79	+8,79
Superannuation allowances and pensions : expenditure in India and England ..	59,80	74,07	+14,27
Commutation of pensions financed from ordinary revenues	26,36	..	−26,36
The share payable to the Calcutta Corporation as their share of the proceeds of the taxes on Motor Vehicles	..	4,50	+4,50
Total ..	..	..	+21,19

APPENDIX II.

		Rs. Lakhs.
1.	Additional expenditure consequent on the reduction in the emergency cut from 10 per cent. to 5 per cent.	18·70
2.	Increase in interest charges on overdrafts	10·94
3.	Expenditure from the proceeds of the taxes on motor vehicles including the amount payable to the Calcutta Corporation; there was no such expenditure in 1932-33	14·57
4.	Additional expenditure from the Central Road Development Fund	2·09
5.	Additional expenditure in connection with the civil disobedience and terrorist movements	5·00
6.	Interest on the capital expenditure on the Damodar Canal ..	4·96
7.	Net additional expenditure on superannuation allowances and pensions and commutation of pensions financed from ordinary revenues in India and England	5·43
8.	Expenditure in connection with the unemployment scheme of the Industries Department	1·00
9.	Items 6-11 and 13-29 of Appendix III	17·03
	Total ..	79·72
0.	Deduct the expenditure under "21—Reduction or avoidance of debt" incurred in 1932-33	8·66
	Net total ..	71·06

APPENDIX III.

		In thousands of rupees.
1.	Increase in interest charges on overdrafts	5,21
2.	Increase in distribution of collections under the Motor Vehicles Tax Act	1,28
3.	Interest on the capital expenditure on the Damodar Canal .	4,96
4.	Increase in expenditure from the Central Road Development Fund	3,74
5.	Increase in the provision for superannuation allowances and pensions in India and England	4,63
6.	Management cost of the Bhowal forests	64
7.	Rewriting of Land Registration Registers	13
8.	Improvements to the Kristapur Canal and silt clearance in the Bhangore Khal	1,89
9.	Construction of sluices at Kalianagar and Bhaitgar and a syphon in the Kalna Channel	11
10.	Revision of the electoral roll for the Legislative Assembly ..	30
11.	Replacement of the State yacht "Rhotas"	1,25
12.	Increased grant for Kala-azar survey	20
13.	Additional building and furniture grants for schools ..	15
14.	Machinery for sugar manufacture at Berhampore ..	11
15.	Grant for the improvement of non-Government colleges ..	45
16.	Provident Fund for co-operative auditors	11
17.	Construction of a police hospital with out-houses in the Reserve Police Lines at Comilla	31
18.	Purchase of a house at Pabna for use as a Circuit House ..	15
19.	The installation of lights and fans in Government offices at Comilla	12
20.	Re-organisation of the Provincial Text Book Committee ..	10
21.	Temporary establishment for the demonstration of the manufacture of glazed pottery	9
22.	Construction of a road through Pora Bazar Government land	34
23.	The Board of Economic Enquiry	15
24.	Expenditure in connection with illicit distillation ..	29
25.	Provision for the starting of Land Mortgage Banks ..	40
26.	Increased provision for repairs to roads and buildings including Rs. 2,50,000 for earthquake damage	6,50
27.	Staff for the Damodar Canal Division	17
28.	Compensation payable to the Calcutta Port Commissioners in regard to the Strand Bank land	2,50
29.	Construction of a building for the accommodation of the Belliaghata Police Station	77
	Total ..	37,05

NON-OFFICIAL BUSINESS

NON-OFFICIAL BILLS

The Bengal Wakf Bill, 1934.

The debate on the Bengal Wakf Bill, 1934, was resumed.

Clause 22.

Maulvi ABUL QUASEM: Mr. President, Sir, may I, with your permission, move the amendment which stands in my name in an altered form? The one which I want to move is in the nature of a short notice amendment. I am only suggesting a change in the language and not any substantial change.

Mr. PRESIDENT: What is your amendment in the altered form?

Maulvi ABUL QUASEM: My amendment runs as follows:—

"That in clause 22, in the first proviso, lines 2 and 3, for the words 'carrying a monthly salary exceeding one hundred rupees' the words 'the maximum monthly pay of which exceeds one hundred rupees' be substituted."

Mr. PRESIDENT: Yes, you have my permission and you can move that.

Maulvi ABUL QUASEM: Sir, in moving this amendment I have one object in view, and that is to make the meaning absolutely clear and unambiguous. Yesterday, it was pointed out by Maulvi Nausher Ali that in different statutes different language is used to express the meaning intended to be conveyed by the first proviso to clause 22, giving rise to ambiguity and difficulty in interpretation. I may draw the attention of the House, Sir, to the language which has been adopted in connection with a similar idea in the Waterways Bill. Sir, in that Bill in clause 28 it is stated that any officer or servant holding a post the maximum monthly pay of which exceeds Rs. 100, who is reduced, suspended, or dismissed by the Chairman may appeal to the Board, whose decision shall be final. And it is on the analogy of the language used therein that I have tabled this amendment. I think, Sir, that even if my amendment is accepted it will remove all ambiguities. I hope that there will be no objection to accept this.

Maulvi ABDUL GHANI CHOWDHURY: Sir, I accept the amendment.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, on behalf of Government I also accept the amendment.

The motion was put and agreed to.

Mr. PRESIDENT: What about amendments Nos. 89 and 90?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, I beg to submit that none of these amendments can be moved.

Mr. PRESIDENT: I must examine them carefully.

(The amendment of Maulvi Abul Quasem was handed over to the Hon'ble the President.)

Mr. PRESIDENT: I have read the amendment which the Maulvi Sahib has moved. What does he think of his amendment No. 90?

Maulvi ABUL QUASEM: Sir, may I submit that amendment No. 90 is not covered by the amendment.

Mr. PRESIDENT: I suppose you are going to make the same alteration in that?

Maulvi ABUL QUASEM: Yes, Sir. I wish to alter the language in a similar fashion.

Mr. PRESIDENT: What about amendment No. 89?

Kazi EMDADUL HOQUE: Sir, might I submit that amendment No. 88, which has been moved by Maulvi Abul Quasem, relates to proviso (*1*) and amendment No. 89 relates to proviso (*2*).

Mr. PRESIDENT: In that case you may move your amendment.

Kazi EMDADUL HOQUE: Sir, I beg to move that in the second proviso to clause 22, in line 2, for the words "one hundred" the word "fifty" be substituted.

Sir, proviso No. 2, clause 22, grants right of appeal to the Board to an officer or servant in receipt of a monthly salary exceeding Rs. 100 who is reduced, suspended or dismissed by the Commissioner and that the decision of the Board shall be final. Now, Sir, as a person who draws a salary exceeding Rs. 100 or more is going to be given the right of appeal, it stands to reason that one who draws a lower salary, and therefore is a poor man in comparison, should have the same right of appeal. The clause as it stands confers a privilege on the highly paid man, whereas it is ominously silent as regards the poorly paid man.

In these days, of course, one cannot expect that the poor man's cry will be given any heed to. Although I have no quarrel with this unfortunate spirit of the times, I feel that there will be widespread sympathy with the poor. It is with that end in view that I want to reduce the amount from Rs. 100 to Rs. 50. I hope that my appeal will not go in vain and that the members of this House will accept my modest amendment.

Maulvi ABUL QUASEM: May I, Sir, at this stage move my amendment, No. 90?

Mr. PRESIDENT: Yes, you can do so.

Maulvi ABUL QUASEM: Sir, I beg to move that in the second proviso to clause 22, lines 1 and 2, for the words "in receipt of a monthly salary exceeding one hundred rupees" the words "holding a post the maximum monthly pay of which exceeds fifty rupees" be substituted.

Sir, the change in the language which I have suggested by this amendment has already been accepted in connection with proviso No. 1. Now, Sir, I also want to have a material change in connection with proviso No. 2. I want to substitute for "one hundred rupees" "rupees fifty." I fully agree with Kazi Emdadul Hoque that a person holding a post the maximum monthly pay of which exceeds Rs. 50 should be granted a right of appeal to the proposed Board of Wakfs, if he is reduced, suspended or dismissed. This is only just and proper. The order of the Commissioner may mean the blighting of his whole career. The power of reversing or revising such order, therefore, should be vested in the Board. I think, Sir, that even if the Board confirms the order of the Commissioner the person aggrieved will have the consolation that 8 or 9 members of the Board have considered his case sympathetically and dispassionately. I submit, Sir, that this provision has been accepted in connection with the Bengal Waterways Bill. So, it will be seen that I am not asking for a new thing, for this House accepted a similar provision in connection with the servants and employees of the Waterways Trust.

With these few words, Sir, I commend my motion to the acceptance of the House.

Maulvi SYED MAJID BAKSH: Sir, might I know from the hon'ble member whether his present amendment relates to proviso No. 2?

Maulvi ABUL QUASEM: Yes.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, I oppose the amendment which has been moved by Kazi Sahib as well as the one moved by Maulvi Abul Quasem. If it had been simply a question of verbal alteration, I would have been glad to accept both of them.

But, Sir, both my friends have moved for changing the figure of "one hundred" and to substitute it by the figure "fifty." This, I submit, Sir, is an important change. Therefore, Sir, I have no other alternative but to oppose these two amendments.

The entire work of this executive Board has been entrusted to the Commissioner and frequent appeals or a large number of appeals from disgruntled employees to the Board will make the work of the Commissioner very difficult. Besides the question of finance also comes in. If an officer is suspended or dismissed and he has got the right of appeal, then a meeting of the Board may be necessary and travelling allowances and various other expenses may have to be incurred. Therefore on these grounds, specially with the object of creating confidence in the executive authority, namely, the Commissioner, and to give him more power I am opposed to the idea of giving the right of appeal to the Board in the case of employees drawing salary of Rs. 50. We all know that when the question of dismissal comes in, we as a rule take a charitable and lenient view, and appeals made to the members of the Board, who are not directly responsible for the administration, are apt to be more lenient than would be the case if the Commissioner, who is responsible for the whole administration, had to decide. It is not a sound principle to allow too many or too frequent appeals to the Board. On these grounds I oppose both the amendments, and if Mr. Quasem withdraws the figure I would accept the rest.

Dr. NARESH CHANDRA SEN GUPTA: I do not understand the position taken by the Hon'ble Minister. If his propositions are correct, it would be entirely wrong for the Council to adopt the same principle as for the Waterways Board. If he is correct, then the discipline of the office would be upset. Thus the second proviso ought to go altogether. If a person drawing Rs. 100 and upwards can cause this nuisance and can be leniently treated, then there is no reason why an officer drawing Rs. 50 should not be similarly treated. There ought to be the same treatment in respect of all officers as far as possible.

As regards multiplicity of appeals, I am afraid that that reflects the official opinion generally; but I would say appeals help in other ways, namely, right of appeals creates a sound confidence in persons who have the right of appeal, and in the second place the right of appeal acts as a check upon the arbitrary action of officials. It is very well known that in cases where there are no appeals the judges, for instance, or magistrates are apt to act with very much less care. (A voice: Question, question!)

Mr. PRESIDENT: Mr. Quasem, are you going to change your figure as suggested by the Hon'ble Minister, or are you going to stick to your own figure?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I made Rs. 100 in the Bill as my figure, and not Rs. 50 which is his figure.

Mr. A. F. RAHMAN: On a point of information, Sir. May I inquire what would be the fate of this Bill if all the amendments are not completed within the days allotted for non-official business?

Mr. PRESIDENT: Three more days are available for this Bill. It is unthinkable that all the amendments relating to it cannot be finished in three days if members wished to do so. I might tell Mr. Rahman that in case the House is not able to dispose of all the motions within the specified time the Bill will not be killed outright but will stand suspended.

Kazi Emdadul Hoque's motion being put, a division was taken with the following result:—

AYES.

Ali, Maulvi Nasan.
Ali, Maulvi Syed Nausher.
Baksh, Maulvi Syed Majid.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kishori Mohan.
Chowdhury, Maulvi Abdul Ghani.
Chaudhury, Maulvi Nurul Absar.
Hoque, Kazi Emdadul.
Hossain, Maulvi Muhammad.
Karim, Maulvi Abdul.
Khan, Maulvi Tamizuddin.
Law, Mr. Surendra Nath.
Quasem, Maulvi Abul.
Rahman, Maulvi Azizur.
Ray, Mr. Shanti Shekhareswar.
Rout, Babu Nagendra.
Roy, Mr. Sarat Kumar.
Roy Choudhuri, Babu Nem Chandra.
Samad, Maulvi Abdus.
Sen, Rai Sahib Akshoy Kumar.
Sen Gupta, Dr. Naresh Chandra.
Singh, Srijut Taj Bahadur.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Bose, Mr. S. M.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Ajimuzzaman.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. N. G. A.
Eusufji, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcett, Mr. L. R.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdulkarim, of Dilduar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Mr. P. N.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Mr. Nazar Rahman.
Martin, Mr. C. M.
Miller, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Nazimuddin, the Hon'ble Mr. Khwaja.
Raheem, Mr. A.
Rahman, Mr. A. F.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. S. N.
Sadullah, Maulvi Muhammad.
Sarkar, Rai Bahadur Nebati Mohan.
Sen, Mr. B. R.
Townend, Mr. H. P. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. deS.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 22 and "Noes" 37, the motion was lost.

Maulvi Abul Quasem's motion failed.

Clauses 22 and 33.

The motion that clause 22 as amended and clause 23 stand part of the Bill was then put and agreed to

Clause 23A.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that after clause 23, the following words and figures be added, namely:—

"23A. There shall be paid to the Commissioner, members, officers and servants of the Board such reasonable travelling allowances for attendance at meetings of the Board and for journeys undertaken in the discharge of their duties under this Act as may, from time to time, be allowed by the Board with the previous sanction of the Local Government."

It is a very simple and necessary amendment and requires no further speech.

Khan Bahadur Maulvi AZIZUL HAQUE: May I ask the Hon'ble Minister whether it is not desirable to do away with the word "reasonable". That is my first suggestion. The second is: does not the draft actually mean that every travelling allowance bill is to be sent to the Local Government? It may be interpreted that way as the draft stands. There is nothing in the Bill that the rates are to be fixed by the Local Government and the travelling allowance should be passed by the Board. You will have to get the previous sanction. Its language might also be interpreted to mean that every travelling allowance bill has got to be sent to the Local Government. I know that is not the intention, but the language of the section as it stands says that you will be paid such travelling allowances as may be allowed by the Board with the previous sanction of the Local Government. Surely that does not indicate the rates at which the travelling allowance will be paid. My third point is, that supposing a meeting of the Board is held for more than a day, what travelling allowance will be admissible to the members, officers, etc., of the Board? No provision has been made for this. I would suggest that the language of the clause may be so as to cover all the points raised by me.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: If you have no objection, I suggest that the consideration of this amendment may be postponed so that the language may be improved.

Mr. PRESIDENT: I have no objection.

Clause 24.

Mr. H. R. WILKINSON: I beg to move that after sub-clause (*1*) (c) of clause 24 the following sub-clause be inserted, namely:—

"(*cc*) keeping in his custody the particulars and all other information relating to *wakfs-al-al-aulad*."

One of the main principles underlying the differentiation between *wakfs-al-al-aulad* and other *wakfs* is that there should be as little interference and as little disclosure of private affairs in these more or less family settlements as possible. It is therefore enjoined on the Commissioner that he should retain in his own custody particulars of the *wakfs-al-al-aulad*.

Khan Bahadur Maulvi AZIZUL HAQUE: I must say that this is the beginning of the thin end of the wedge. I may say that the purpose for which the Board is created will be nullified so far as *wakfs-al-al-aulad* are concerned. If this provision is accepted, the result will be that so far as the Board is concerned, you cannot trust the Board with any information in connection with *wakfs-al-al-aulad*. I find that the later amendments have been so drafted as to make it impossible for the Board to get any information regarding *wakfs-al-al-aulad*. You are entrusting the Board with certain functions; and if the Board is to function, I do not see how it is possible for the Board to get such information. That is my objection. I do feel that it would be against the very spirit of the Act, if you take away power of the Board in this respect.

Maulvi ABDUL GHANI CHOWDHURY: I oppose the amendment.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I do not think it is fair to anticipate what are going to be in the amendments that are to come. As far as this amendment is concerned, it enjoins on the Commissioner secrecy as regards documents and other particulars relating to *wakfs-al-al-aulad*. As Mr. Wilkinson has already explained, this is one of the fundamental reasons why we have made a differentiation between *wakfs-al-al-aulad* and other *wakfs*. The reason, as was explained by various speakers when the definition of *wakf-al-al-aulad* was discussed, was that *wakf-al-al-aulad*, whatever may be its religious and legal interpretations, in actual practice and in most cases is a sort of family settlement as allowed by the Moslem law. If there is going to be control and supervision of *wakf-al-al-aulad* where the beneficiaries are mostly members of the family and where family secrets are also involved, it is only fair that as far as particulars about those *wakfs* are concerned, they should be entrusted to one person only and should not be discussed at a meeting of the Board. I would like the

House clearly to understand that there should not be any prejudice, because we have made a distinction between *wakf-al-al-aulad* and other *wakfs*. The object of this Bill is to safeguard the interests of beneficiaries and charities, and I put it to the House that if in any amendment which has been moved by Government it can be shown that the beneficiaries and charities will not be adequately protected from the illegal action of the *mutwalli*, then I am quite prepared to admit that the amendment should not be accepted by the House. I can, however, show that the interests of the beneficiaries and charities and what is more the very purpose for which the *wakf* has been created will be properly safeguarded. I think there should not be any objection merely because we have made a distinction between *wakfs-al-al-aulad* and other *wakfs*. I claim that the amendment does not in any way curtail the rights or privileges of any party. It is merely a precautionary step that we have taken, and I think the House will kindly accept it.

Maulvi SYED NAUSHER ALI: On seeing the amendment itself I thought it was absolutely harmless, because it simply stated that the Commissioner will keep in his custody the particulars and all other information relating to *wakfs-al-al-aulad*. This does not indicate that even secret documents may be kept confidential by the Commissioner. There is absolutely nothing in the wording of the amendment to this effect. But it appears from the speech of the Hon'ble Minister that he means that secret and confidential documents will not be divulged by the Commissioner to the Board. As far as I can see no court will interpret it in the way suggested by the Hon'ble Minister. It will be the function of the Commissioner to keep in his custody particulars and all other information relating to *wakfs-al-al-aulad*. Every document, every bit of paper will be in his custody. Therefore so far as this amendment is concerned, I think it will be absolutely superfluous unless there be any sinister motive, as has been suggested by Khan Bahadur Azizul Haque.

Dr. NARESH CHANDRA SEN GUPTA: I agree with Maulvi Nausher Ali in saying that the mere existence of this clause will do no harm. I also agree with the Hon'ble Minister that so far as *wakfs-al-al-aulad* proper are concerned, there is very good reason for keeping these documents secret. But we have already adopted a definition of *wakf-al-al-aulad* which includes *wakfs* giving about 25 *per cent.* or more to charities. What would happen in such cases? It may be that the papers furnished to the Commissioner may disclose the existence of such *wakfs* but nevertheless the Board will know nothing about it, and why? That is the point. Difficulty is created by the definition of *wakf-al-al-aulad* which is different from the definition of the term in Moslem law.

Mr. Wilkinson's motion was then put and agreed to.

Maulvi ABUL QUASEM: I beg to move that in clause 24 (*1*) (*d*), line 3, after the word "*wakfs*" at the end the following words be inserted, namely:—

"and for giving effect to the provisions of this Act."

The word "provision" as printed in the list of business is in the singular and I want to make it plural. I want to make this section exhaustive. The functions to be performed by the Commissioner as enumerated in the clause may not be exhaustive, unless the addition of the words suggested by me is accepted.

Mr. H. R. WILKINSON: I will merely point out that to give effect to the provisions of the Act will also be a function of the Board. If you emphasise this as a function of the Commissioner, you suggest that it is not the function of the Board.

The motion was then put and lost.

The motion that clause 24 as amended stand part of the Bill was put and agreed to.

Clauses 25 and 26.

Rai Sahib AKSHOY KUMAR SEN: I beg to move that the proviso to clause 25 be omitted.

I move this amendment on the ground that the proviso to clause 25 empowers the Board to revise the provisions of a deed of *wakf* which even the civil courts have no power to do. The proviso reads that "provided that in furtherance of the objects of the *wakf* or in the interest of the beneficiaries the Board may revise any provision in the *wakf* deed which has become obsolete or inoperative or impossible of execution owing to efflux of time or changed conditions." My submission is that the words "changed conditions" are very very vague. By efflux of time any provision in the deed may become inoperative. As we see in the case of a will, if any provision becomes inoperative by the efflux of time the court has no power whatsoever to insert in the will its own provision for the purpose of some good to the legatee or to the outsider. The court has no power to introduce a new provision or give effect to a provision which has become obsolete or inoperative by efflux of time; so my submission is that this proviso would have the effect of empowering the Board to do a thing which even the civil courts of the land cannot do. My object is that the Board may be allowed to have some power no doubt, but not such as would curtail the power of civil courts. Accordingly, I submit my amendment for the acceptance of the House.

(At this stage the Council was adjourned for 15 minutes.)

(After adjournment.)

Dr. NARESH CHANDRA SEN GUPTA: I am afraid my friend is entirely wrong when he thinks that the civil courts have not got the power which has been sought to be given to the Commissioner by this clause. I am afraid he has forgotten the doctrine of Cypres by which the courts can in a contingency like this make provision for the disposal of income which is undisposed of practically. Sir, the doctrine of Cypres is not only a doctrine of the English law of equity but it has been accepted in Muhammadan law as well. So there is nothing strange in that. But with regard to the giving of power to the Board, instead of giving it in the hands of the court, the section by itself does not exclude the jurisdiction of the court in a proper suit brought before it to deal with the matter; but it also gives jurisdiction to the Commissioner and there are precedents for it elsewhere to. The Commissioner can exclude a thing like this in Madras and this is also done by the Charity Commissioners in England.

Rai Sahib Akshoy Kumar Sen's motion was then put and lost.

Rai Bahadur KAMINI KUMAR DAS: I beg to move that for the proviso to clause 25, the following be substituted, namely:—

"provided that in furtherance of the subjects of *wakf* the Board may revise any provision in the *wakf* deed which has become impossible of execution owing to the efflux of time or changed conditions in such a way as not to be inconsistent with the intention of the *wakf*."

In moving this motion I have the same object in view, and that is to interfere with the provisions of the Muhammadan law as little as possible. So when any provision in the *wakf* deed has become impossible of execution our main object will be to find out what would have been the intention of the *wakif* under the changed circumstances, and to give effect to that intention. But if there be also a provision to look after the interest of the beneficiaries, then there will or may be a tendency to ignore the intention of the *wakif* and revise the provision for the interest of the beneficiaries, though it may not be according to the intention and object of the *wakif* as can be gathered from the facts and circumstances of the case. I therefore ask the House to consider whether we should adhere to the Muhammadan law as it was, or will allow it to be changed not in violation of the Queen's Proclamation but in an indirect way which may suit the convenience and purpose of the interested persons. With this submission, Sir, I place my motion before the House for the acceptance of the members.

Maulvi ABDUL GHANI CHOWDHURY: I beg to oppose the motion.

The motion was put and lost.

Maulvi ABUL QUASEM: I beg to move that in proviso to clause 25, in lines 3 and 4, the words "obsolete or" be omitted.

Sir, as I understand that this amendment is acceptable to the member in charge as well as to Government, I do not wish to make a speech.

Maulvi ABDUL GHANI CHOWDHURY: I am prepared to accept the amendment.

The motion was put and agreed to.

The motion that clause 25 as amended and clause 26 stand part of the Bill was then put and agreed to.

Clauses 27 and 28.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that to clause 27 before the words "The Commissioner" the following words be prefixed, namely:—

"Subject to any rules made by the Local Government in this behalf."

There is one aspect of the Bill as it has emerged from the Select Committee which Government view with some misgiving, and that is the proposed employment of Divisional Commissioners and District Officers on duties connected with this Bill. I desire to make it quite clear that the duties on which Government officers could be employed would have to be strictly confined to non-controversial matters and also they are not to be employed on anything that would tend to bring them into conflict with the religious susceptibilities of the people. As, however, there is a provision in the Bill for employing other persons to whom duties can be delegated by the Commissioners, this amendment of mine will not create any difficulty as far as the working of the Bill is concerned.

Maulvi ABDUL GHANI CHOWDHURY: I am ready to accept the amendment.

The motion was put and agreed to.

The motion that clause 27 as amended and clause 28 stand part of the Bill was put and agreed to.

Clause 29.

Rai Sahib AKSHOY KUMAR SEN: I beg to move that clause 29 be omitted.

My ground is that clause 29 encroaches upon the power of the civil courts. The civil courts have power, when a suit has been filed by any person for having an account, to call upon the defendant to render an account and I think it would be more beneficial to the parties if such suits are instituted in the civil court than if it is done by this Board. I do not know who would be the members or the Commissioners of the Board. They may or may not be lawyers; so, on this ground I move that this clause be deleted, and I commend my motion to the acceptance of the House.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, I oppose the amendment inasmuch as I feel that if it is passed it will prove fatal to the Bill. I could not quite follow what the hon'ble member meant when he said that it would interfere with the rights of other people. I hope the House will reject it.

Maulvi ABDUL GHANI CHOWDHURY: Sir, I too oppose the amendment moved by Rai Sahib Akshoy Kumar Sen.

The motion was put and lost.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, have I your permission to move a short notice amendment instead of the one which stands in my name on the agenda paper?

Mr. PRESIDENT: Yes, I have seen it. You have my permission to move it.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, my modified amendment reads as follows:

"I beg to move that in clause 29, in line 1, before the words "any person interested" the words "in the case of a *wakf-al-al-aulad*, a beneficiary or any person entitled under the *wakf* deed to receive pecuniary or other material benefits either on his own account or on behalf of a religious or charitable institution, and in the case of any other *wakf*" be prefixed.

Sir, my amendment slightly differs in two respects from the one put down on the agenda paper. It has been found necessary to make these alterations because the language used was, on examination, found to be unsatisfactory. The amendment is necessary to protect the rights of persons receiving benefits under the *wakfnama* on behalf of mosques or *dargas*. It will also give the person who is recipient of charity,

pension or pittance under the *wakf* deed the right to have an inquiry made if the *mutwalli* refuses to pay him his dues.

Sir, I would like the hon'ble members to bear in mind that the modification of the amendment in the agenda paper has been made at the instance of Maulvi Abul Quasem to remove all possible ambiguity. The criticism that has been levelled against the creation of any distinction between *wakf-al-al-aulad* and other *wakfs* is mainly based on the misapprehension that *wakfs-al-al-aulad* are excluded from the operation of the Bill. As I have said before and I want to repeat it again that as far as *wakfs-al-al-aulad* are concerned, they have not been excluded from the operation of the Bill. All that has beeen done is that the opinions of the leaders of the various sections of the Muslim community, who have been emphatic as regards the exclusion of *wakfs-al-al-aulad*, have been taken into consideration. Sir, I consider this to be the right procedure to adopt. Where you have got a public *wakf*, the purpose of which is mainly the provision of public charity, it is necessary that the public should have a right of scrutiny and supervision and also should have a right to get an inquiry made whether the *wakfs* are properly supervised. It is also necessary that the action of these public *wakfs* should be properly checked. In the case of *wakfs-al-al-aulad* this right of scrutiny is reserved to the members of the family of the *wakif*, and to the beneficiaries mentioned in the *wakf* deed. I submit that looking after the proper working of *wakfs-al-al-aulad* should, in all fairness, be confined to persons named in the *wakf* deed. Section 29 gives every one the right even in the case of *wakf-al-al-aulad* to have an inquiry made as regards the action of the *mutwalli*. Sir, it is, therefore, clear that though there is a distinction between *wakf-al-al-aulad* and public *wakf* yet actually it will be possible for interested parties to have their grievances redressed much more easily than by the present cumbrous procedure. Maulvi Nausher Ali has raised the question that the corpus of the *wakf* may be wasted and that therefore the public should have the right of supervision. Under the various clauses of this Bill you will find that ample steps have been taken to ensure against any such wastage or doing away with the corpus of the *wakf* by the *mutwalli*. That is fully secured. The only question is that we want to protect innocent persons connected with the administration of *wakf-al-al-aulad* from undue harassment—say from neighbours who are not on good terms with them. With this object in view, I have put in this amendment for the consideration of the House, and I have with your permission, Sir, amended my original amendment. I hope, Sir, that without further discussion the House will accept this very simple amendment of mine.

Maulvi SYED MAJID BAKSH: May I, Sir, ask the Hon'ble Minister one question relating to the 25 *per cent.*?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: The people benefiting under public charities—the fixed percentage of which may be 25 —will have the right to have an inquiry made, for example, a *wakif* may want to provide a pension or a pittance for an old servant or he may provide stipends for poor students for the purpose of defraying the expenses of their studies in the local institutions. People under both the categories can, if they so desire, press for an inquiry alleging that the *mutwalli* has stopped their allowance. Therefore, I submit, Sir, that both the heirs of the *wakif* and the people receiving charities under the *wakf* deed can get relief under this clause. Sir, when I move another amendment later on, it will be found that in the case of *wakf-al-al-aulad* if it is found that the *mutwalli* has been seriously mismanaging the property then the Local Government can have the *wakf-al-al-aulad* treated as public *wakf* for a limited number of years. Thus, you see, that there are two safeguards. If the *mutwalli* persistently defaults then the Commissioner of Wakfs with the sanction of the Local Government will inqiure into the matter and may declare that the *wakf-al-al-aulad* will be treated like a public *wakf* for a number of years. That is the first safeguard. The second safeguard lies in this, *viz.*, that if the 25 *per cent.* charity is not properly distributed it is open to any one interested to represent to the Commissioner and have his grievance remedied. So, Sir, I do not see how any class of people will be adversely affected. Any person interested may make an application to the Commissioner supported by an affidavit to institute an inquiry relating to the administration of a *wakf* or for the examination and audit of the accounts of the *wakf*, and the Commissioner on receipt of such application and the prescribed fee, shall take such action thereon as he thinks fit. There may be cases in which it may be laid down that food must be provided on certain days during the *Ramzan*. Somebody, for instance, may complain that during the days of *Ramzan* meals have not been provided according to the terms of the *wakf* deed. He can ask the Commissioner for an inquiry. It will thus be seen that ample provision has been made for proper inquiry in case there is negligence on the part of the *mutwalli* of *wakf-al-al-aulad*.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, I do not understand why such a lengthy apology is at all necessary simply to define persons interested in the case of a *wakf-al-al-aulad*. I do not understand, Sir, why the wide enumeration of different classes of people interested in *wakf-al-al-aulad* is being given by the Hon'ble Minister. I do not understand what improvement will be made by accepting this amendment. I submit, Sir, that it will simply introduce unnecessary complications in the Bill. I think a man who has a little knowledge of English understands what "person interested" means.

Mr. A. RAHEEM: On a point of information, Sir. If this amendment is accepted by the House, will my amendment No. 113 be affected?

Mr. PRESIDENT: I shall examine the point when that amendment is reached.

Maulvi ABDUL GHANI CHOWDHURY: This differentiates between two different kinds of *wakfs* and to shorten the debate I may say I accept the amendment.

Maulvi SYED MAJID BAKSH: So far as charity is concerned, in what respect is the original section not good enough?

Khan Bahadur Maulvi AZIZUL HAQUE: Might I explain, I may be able to add nothing except a few arguments to the definition of the word. Under this not only has he got some material interest in the *wakf* but also certain obligation in the nature of performing any religious right or worshipping or participating in any religious or charitable institution. But I think the legitimate point which may be yielded for the time being—whatever the developments may be later on—is whether anybody ought to be allowed to interfere in a matter which is more or less of a private nature. That is why this amendment is made in so far as material beneficiaries are concerned. Whether it is *wakf-al-al-aulad* or public *wakf* everybody will have a right to interfere, but so far as other *wakfs* are concerned nobody will be allowed to do so. I personally feel that even if there is no distinction between the two as a matter of fact it would be serious at this stage to accept in the present circumstances.

The Hon'ble Mr. Khwaja Nazimuddin's motion was put and agreed to.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in clause 29, in lines 5 and 6, after the words "the prescribed fee" the words "and on being satisfied from the facts set forth in the affidavit that there are reasonable grounds for believing that the affairs of the *wakf* are being mismanaged" be inserted.

I think, Sir, this is self-explanatory and requires no speech.

Maulvi ABDUL GHANI CHOWDHURY: I accept the amendment.

The motion was put and agreed to.

Mr. A. RAHEEM: I beg to move that in clause 29, line 6, after the word "thereon" the following be inserted, namely:—

"For the due preservation of the *wakf* estate."

I think the main object of the Bill is the preservation of *wakf* estates, and, therefore, it would be better that these words should be inserted to make it more clear.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: The main object of the Bill is not merely the preservation of the estates but also to see that charities are provided for, and the benefits accrue to, the people and to see to the proper administration of the *wakf* estates. Therefore, I do not think this amendment can be accepted. For this reason I would ask the mover to withdraw his amendment.

The motion was then by leave of the House withdrawn.

The motion that clause 29 as amended stand part of the Bill was then put and agreed to.

Clause 30.

Rai Sahib AKSHOY KUMAR SEN: I beg to move that clause 30 be omitted.

I would not have moved this amendment in view of clause 32. Now finding that amendments Nos. 121 and 122 have been tabled and apprehending that clause 32 may be deleted, I think it proper to move my amendment. On this ground I commend my amendment for the acceptance of the House.

Maulvi ABDUL GHANI CHOWDHURY: I oppose the amendment.

The motion was put and lost.

Mr. A. RAHEEM: I beg to move that after clause 30, the following proviso be added, namely:—

"Provided that any witness or parties, including the *mutwalli*, may appear by pleader, or give evidence on commission."

The reason of my moving this amendment is very clear. I think it will be necessary to provide against unnecessary harassment of the *mutwalli* or any witness who may be coming all the way from the *mufassal* to Calcutta at the sweet will of the Commissioner and to avoid unnecessary expenses of travelling which will ultimately fall on the income of the *wakf*. Therefore, I think it is necessary to put in this provision.

Khan Bahadur Maulvi AZIZUL HAQUE: I feel this is not necessary, because the Board has to summon witnesses for the production of documents and papers just as is provided in the case of the Civil Procedure Code or the Criminal Procedure Code. The Civil Procedure

Code provides for such contingencies, and in that view there is no necessity for this. On the other hand the Civil Procedure Code contains something more than this, and I think collective wisdom is better than isolated opinion.

Maulvi ABDUL GHANI CHOWDHURY: I oppose this only because it is covered by section 3 of this Bill.

The motion was put and lost.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move the amendment that stands in my name.

I have already explained this matter in my previous speech. So I do not think anything further is necessary. This is a very salutary provision against mismanagement by *mutwalli*.

Khan Bahadur Maulvi AZIZUL HAQUE: Would it not be right, Sir, if he reads his amendment?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: The amendment standing in my name runs as follows:—

"That after clause 30, the following be inserted, namely:—

'30A. (*1*) If after an inquiry under section 29 the Commissioner is of opinion that the affairs of any *wakf-al-al-aulad* have been mismanaged to such an extent as to make it desirable for the protection of the *wakf* property or in the interest of the beneficiaries that the *wakf* should be subjected to greater control and supervision, he may recommend to the Local Government that such *wakf* shall for a specified period be subject to the provisions of this Act which are applicable to *wakfs* other than *wakfs-al-al-aulad*.

(*2*) After considering any recommendation of the Commissioner under sub-section (*1*), the Local Government may, if it thinks fit, by notification in the *Calcutta Gazette*, direct that for such period as may be specified therein the provisions of this Act which are applicable to *wakfs* other than *wakfs-al-al-aulad* shall so far as possible apply to the *wakf* to which the recommendation relates and thereupon, notwithstanding anything contained in this Act, these provisions shall apply accordingly.' "

I do not think any explanation is necessary. This thoroughly proves the *bona fides* of the Government in making a difference between *wakfs* and *wakfs-al--al-aulad* as defined in the Bill.

Maulvi ABDUL GHANI CHOWDHURY: This is something out of nothing, and I accept the amendment.

The motion was put and agreed to.

The motion that clause 30 as amended and new clause 30A stand part of the Bill was then put and agreed to.

New Clause 23A.

Mr. PRESIDENT: We shall now get back to item 91, new clause 23A.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move new clause 23A in the following form:—

Travelling allowance.

23A. There shall be paid to the Commissioner, members, officers and servants of the Board allowances for attendance at meetings of the Board and for journeys undertaken in the discharge of their duties under this Act at such reasonable rates as may, from time to time, be allowed by the Board with the previous sanction of the Local Government.

This amendment was postponed for drafting, and requires no speech.

Mr. PRESIDENT: Does that satisfy you, Khan Bahadur?

Khan Bahadur Maulvi AZIZUL HAQUE: Yes, Sir.

The motion was put and agreed to.

Clause 31.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in clause 31, in line 1, before the words "The Commissioner" the words "Except in the case of a *wakf-al-al-aulad*" be prefixed.

I am afraid that this amendment may be misunderstood. The main object of this amendment is to preserve secrecy as regards the affairs of *wakf-al-al-aulad*. If the Board requires any information or papers for the purpose of performing their statutory duties, the Commissioner will supply them. I admit that we must have the same confidence in the Board as in the Commissioner. But after all confining a secret to one person is different from confining it to 7 or more; besides, the Commissioner is a paid servant whereas the Board will consist of gentlemen doing honorary work. I, therefore, submit that this amendment is in the public interest for the purpose of preservation of secrecy of family affairs. I submit that actually this clause will not in any

way affect the proper supervision and control of any kind of *wakf* and that is the only test that should be applied in judging the merits of any of the clauses of the Bill. If we find that the clause of this Bill while serving a useful purpose does not in any way curtail the right of control and supervision then the clause should be accepted by the House. Apart from all other considerations it is expedient to provide this safeguard and the House will kindly accept it.

Khan Bahadur Maulvi AZIZUL HAQUE: I am afraid such laws as are framed are not to be merely looked at from the common sense, but from non-commonsense points of view, I might make it clearer that law should be such as to be fool proof as well. I am drawing your attention to section 24 under which the Board has certain functions to perform and those functions relate not only to public *wakfs* but also to *wakfs-al-al-aulad*. These functions are:—

(*i*) in the absence of any directions by the *wakf* or any lawful authority, declaring what proportion of the income or other property of the *wakf* shall be allocated to any particular object of the *wakf*;

(*ii*) declaring in what manner any surplus income of a *wakf* shall be utilised;

(*iii*) constituting committees where necessary for the administration of *wakfs*;

(*iv*) exercising and performing such other powers and duties as are expressly conferred or imposed on the Board by or under this Act;

(*v*) Generally advising the Commissioner in the exercise and the performance of his powers and duties under this Act.

These are the functions which the Board will have to perform. Now, what is the position under section 31 if it is amended in the way suggested? The position is that by statute you are providing that the Commissioner is not bound to give any information relating to *wakfs-al-al-aulad* to the Board, if he chooses. Even in the history of executive administration it is very rare, and I fail to understand how you are going to provide that. You are providing for secrecy, and I do admit that up to a certain extent secrecy is necessary. I also admit that it is necessary that up to a certain extent private things are to be protected. But the ultimate effect of this amendment will be that so far as *wakfs-al-al-aulad* are concerned the Board's functions will be nullified, and I do not think that even a vote of censure will be worth anything. In any case my point is that in legislation you ought not to put a thing which might create difficulties at any moment. I suggest that this section should be revised in the following way: "The

Commissioner shall be bound to comply as far as possible with any request made by the Board for the supply of any information or the production of any document, provided if such information or the production of such document is necessary for the purpose of carrying out the functions of the Board." If you consider that the Commissioner does not give all or any information to the Board, then why embarrass the statute? I feel that the net result of the amendment will be a likelihood of a deadlock between the Commissioner and the Board, the moment the Commissioner so chooses. This section should be so drafted as to keep in view the functions of the Board, and to make it possible for the Board to secure any information or document it wants to carry out the provisions of the Act. Under the Muhammadan law the *kazi* also has certain rites to perform. Therefore if this amendment is accepted, the machinery by which all the powers are to be exercised will be inoperative.

Maulvi SYED NAUSHER ALI: I beg to oppose this amendment and that on the simple ground that there may be circumstances when it may be necessary not only in the case of *wakfs-al-al-aulad* but also in the case of other *wakfs* to withhold certain documents from members of the Board. Such circumstances are not altogether inconceivable, and persons acquainted with administration know very well that it is not always possible or desirable in the interests of the public as well as in the interests of the very people from whom the documents are withheld not to disclose any bit of paper, and I fully realise the object with which this amendment has been brought forward. But to put in the words as suggested "except in the case of a *wakf-al-al-aulad*" will frustrate the very object of this section. It will prevent the members of the Board from asking for any document with regard to a *wakf-al-al-aulad*. The Hon'ble Minister in his speech has stated that the documents which may be necessary for the Board to perform its functions will be produced If these words be inserted, I am afraid the Commissioner will be practically bound hand and foot not to disclose any document whatsoever relating to *wakfs-al-al-aulad*. Therefore, what I suggest is that this section may remain as it stands and a proviso be added to it to the following effect:—

"Provided that the Commissioner may, with the sanction of the Local Government, withhold any document from the Board which in his opinion should not be disclosed in the interest of the *wakf*."

I think a proviso to this effect will serve the purpose for which the Hon'ble Minister has been pleased to move this amendment. I would appeal to the Minister to consider whether this amendment will be acceptable to him.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: If it is put in the other way I think I might be able to accept it.

Maulvi SYED NAUSHER ALI: This will authorise the Commissioner not only to withhold documents relating to *wakfs-al-al-aulad* but to any *wakf* when it is in the interest of the *wakf* itself and I do not see why there should be any objection to the proviso. I therefore appeal to the Minister to accept this amendment. With these words I oppose the amendment moved by the Hon'ble Minister.

Khan Bahadur Maulvi AZIZUL HAQUE: May I point out that there seems to be no difference in principle between the amendment proposed by the Hon'ble Minister and that suggested by the previous speaker. I therefore suggest the postponement of the consideration of this amendment.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I agree to the postponement of the consideration of this amendment.

Mr. PRESIDENT: All right.

Clause 32.

Maulvi TAMIZUDDIN KHAN: I beg to move that clause 32 be omitted.

This clause seems to be unnecessary. There is no necessity to provide that the Commissioner shall not have certain powers. The Commissioner will be in a position where necessary, to get documents, even from strangers, if there is no such clause in the Bill. It may be that a *mutwalli*, may purposely transfer certain very important documents to a person who is a stranger. If the clause be retained, the Commissioner will be prevented from requiring that document. Therefore, the clause is unnecessary and will stand in the way of smooth working of the Bill.

Maulvi SYED NAUSHER ALI: In this connection I would only draw the attention of the Hon'ble Minister to sub-clause (4) of clause 38. Here it is laid down that in the case of a *wakf* other than a private *wakf*, a stranger to the *wakf* shall be entitled with the permission of the Commissioner to inspect and obtain copies of such proceedings or other records relating to the *wakf*: provided that the Commissioner shall not grant such permission without consulting the *mutwalli* of the *wakf*. Now, here the authority or power is given to a stranger to have

copies of certain records, whereas under clause 32 the Commissioner is prevented from asking for certain records, even if it is necessary or relevant, from outsiders. Therefore, it does not appear reasonable why the Commissioner should not have power to call for records in the possession of persons other than those interested in it, even if those records are necessary for the proper administration of the *wakf* itself. Supposing, for example, there is some underhand dealing with the *wakf* property between certain persons and the document is in the custody of a third person. The interested person comes and makes an affidavit that such and such a transaction will take place which may affect the document at least and that the document is in the possession of a certain person. In that case it may be necessary to have some idea of the transaction or of the document itself. It is desirable therefore that in the interest of the administration the Commissioner should have power to call for these papers and ask the person in possession to produce them. Therefore, to make two negative provisions in the Act seems to be absolutely unnecessary or rather harmful. With these words I support the amendment of Maulvi Tamizuddin Khan.

Mr. A. F. RAHMAN: I support the amendment. I feel that if you are giving the power to a stranger to obtain inspection of a document, you ought to give that power to the Commissioner. If you feel that that power should not be given to the Commissioner, you either take away clause 38 or clause 32, or if necessary the next amendment may be accepted.

Mr. SARAT KUMAR RAY: In clause 38, sub-clause (3), it is laid down that no stranger to the *wakf* shall be entitled to inspect or obtain copies of any such proceedings or other records relating to a private *wakf*. This sub-clause ought to be omitted, if clause 32 is to be omitted. Now, Sir, on the other hand, I oppose the amendment because for the reason I have just stated, I think clause 32 ought to be retained.

Maulvi ABDUL GHANI CHOWDHURY: I am willing to accept the amendment moved by Maulvi Tamizuddin Khan.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I am prepared to accept the omission of sub-clause (4) in clause 38. I think it is reasonable. If we prevent the stranger from being called upon to produce documents, it is necessary that the stranger should not have any right to the documents in the possession of the Commissioner. I would like to abide by the decision of the Select Committee on this question as regards strangers. I am for retaining clause 32, but I would like to inform the House that I am prepared to accept the omission of sub-clause (4) in clause 38 in the event of clause 32 being retained.

The motion of Maulvi Tamizuddin Khan being put a division was taken with the following result:—

AYES.

Ali, Maulvi Hassan.
Ali, Maulvi Syed Nausher.
Baksh, Maulvi Syed Majid.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhuri, Babu Kishori Mohan.
Chowdhury Maulvi Abdul Ghani.
Eusufji, Maulvi Nur Rahman Khan.
Haque, Khan Bahadur Maulvi Azizul.
Hoque, Kazi Emdadul.
Hosain, Nawab Musharruf, Khan Bahadur.
Hossain, Maulvi Muhammad.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Momin, Khan Bahadur Muhammad Abdul.
Quasem, Maulvi Abul.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-.
Ray, Babu Amulyadhan.
Shah, Maulvi Abdul Hamid.
Sulaiman, Maulvi Muhammad.
Suhrawardy, Mr. H. S.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Bal, Babu Lalit Kumar.
Barman, Babu Premhari.
Barma, Rai Sahib Panchanan.
Bose, Mr. S. M.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Nazzar Rahman.
Dutt, Mr. B. S.
Edgley, Mr. N. B. A.
Farequi, the Hon'ble Nawab K. S. M., Khan Bahadur.
Pawsus, Mr. L. R.
Ghuznavi, the Hon'ble Alhaj Nawab Bahadur Sir Abdelkerim, of Dildaar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Hagg, Mr. G. P.
Hussain, Maulvi Latafat.
Khan, Mr. Razaur Rahman.
Martin, Mr. O. M.
Mitter, Mr. S. C.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Raheem, Mr. A.
Ray, Babu Nagendra Narayan.
Ray Chowdhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Ray, the Hon'ble Sir Bijay Prasad Singh.
Roy, Babu Haribansa.
Ray, Mr. Saileswar Singh.
Ray, Mr. Sarat Kumar.
Ray, Mr. S. N.
Sahana, Babu Satya Kishor.
Sarkar, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. S. R.
Taweesd, Mr. H. P. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 21 and "Noes" 39 the motion was lost.

The motion that clause 32 stand part of the Bill was put and agreed to.

Clause 33.

The motion that clause 33 stand part of the Bill was then put and agreed to.

Clause 34.

Mr. A. RAHEEM: I beg to move that clause 34 be omitted.

My reason for putting in this amendment is that it would be unduly interfering with the management of the *wakf*. This I think should be left entirely in the hands of the *mutwalli* who knows how to manage the *wakf*, at what time to pay taxes and revenues, etc. Of course if he does not do this properly, then the question of interference will

arise and the Board may interfere then. Therefore, I consider this clause unnecessary and more for its omission.

Khan Bahadur Maulvi AZIZUL HAQUE: I think, Sir, this clause has been thoroughly misunderstood. A *wakf* is of such a nature that according to Muhammadan law certain duties are cast upon the *mutwalli* and one of his main duties is the preservation of the estates. Under this section as the drafting at present stands, it is for the purpose and the ultimate interest of the estate itself that there should be a reserve fund. Suppose there is a *zemindary*; there are bad days, there are worse days and there are better days. If there is no reserve fund that estate will default and the property would be likely to be sold? To avoid that, every modern institution has for its preservation a reserve fund, and an estate also should do so. I might say at this stage that according to the Muhammadan law, even though a *wakif* may not put in such a request, or desire in the document or even if he expresses a desire to the contrary, the law lays down that preservation of the *wakf* is the first charge on the property itself and the estate's liability by default of which the property is likely to be sold is also a primary liability on the estate. In view of the modern conditions when we find that economic difficulties do crop up from time to time it is very much necessary that for the purpose of making provision for the payment of rent, rates and taxes, etc., a reserve fund should be created, and not only that, but also to keep the property in proper repair. May I ask the mover if he has ever seen in his experience that the question of repair has been seriously taken of by the *mutwallis*? I may also say that repair of a *wakf* is the first charge upon the property, and unless that is done preservation in perpetuity cannot be effected. That being so, I think that clause 34 has been very well drafted, and its provision will enable the property to be kept intact. After all the *wakf* does not mean that his property will be sold for non-payment of its dues. But if the *mutwalli* neglects to preserve and keep the property in repair I think it is the duty of the State to interfere. In that view, Sir, I oppose the amendment.

Nawab MUSHARRUFF HOSAIN, Khan Bahadur: So far as the reserve fund is concerned, I am sorry to see that my friend, Mr. Raheem, who comes from a business house, is opposed to have a reserve fund. Sir, if there is any provision in this Bill which I should strongly support, it is this provision of a reserve fund. Unfortunately in Bengal the idea of a reserve fund is new, and we have got it really from European firms specially. I think this idea of a reserve fund should be broadcast and every one should have a reserve fund to meet future difficulties. Sir, all the troubles that we are now experiencing in these bad days would disappear, if we had a reserve fund. On this ground, Sir, I hope my friend will withdraw his amendment.

Mr. A. RAHEEM: In view of the speech of the Nawab Saheb, I beg to withdraw my amendment with the leave of the House

The motion was then by leave of the House withdrawn.

Mr. H. R. WILKINSON: I beg to move that existing clause 34 be renumbered as sub-clause (*1*) of that clause and after the word "*wakf*" at the end of this sub-clause as now renumbered the words "other than a *wakf-al-al-aulad*" be added.

Mr. H. R. WILKINSON: I also beg to move that after sub-clause (*1*), as renumbered, of clause 34 the following sub-clause be inserted, namely:—

"(2) The Commissioner may, for the purposes referred to in sub-section (*1*), at the request of the majority of the beneficiaries of a *wakf-al-al-aulad*, direct the creation and maintenance, in such manner as he may think fit, of a reserve fund from the income of such *wakf*."

This amendment should be read with the subsequent amendment which requires that the majority of the beneficiaries should make a request before the Commissioner can take similar action in the case of a *wakf-al-al-aulad*. This is consistent with the differentiation between the two kinds of *wakfs*, but as it is intended to benefit all *wakfs*, provision for *wakfs-al-al-aulad* should be inserted subject to the condition proposed.

Khan Bahadur Maulvi AZIZUL HAQUE: Mr. President, Sir, may I point out to the hon'ble mover of the amendments a little difficulty which I feel as regards the language.

Mr. PRESIDENT: In regard to which amendment?

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, it is with regard to amendment No. 134. I find the expression "at the request of the majority of the beneficiaries" in the amendment. Is it not possible that two beneficiaries may have ninety *per cent.* interest while the rest may have only ten *per cent.*? Is it really the object of Government that such a thing should continue? I am only drawing the attention of Government to the difficulty which I feel, and I hope that Government will be able to clear up my doubts.

Maulvi ABDUL GHANI CHOWDHURY: Mr. President, Sir, I beg to oppose the amendments moved by Mr. Wilkinson. The amendments proposed by Government are all intended to give a free hand to the *mutwallis* for family *wakfs*. I feel that they are calculated to reverse the policy and negative the principle underlying the sanction that validated such *wakfs*. The distinction, if recognised in this Act,

will go a great way in creating worst form of perpetuities that will do good neither to humanity nor to the descendants of the *wakifs* but will demoralise the *mutwallis* and exterminate the *wakifs'* families. Mr. Ameer Ali wanted to protect the family properties dedicated by way of *wakf* and we want to protect the families themselves for which these properties were dedicated and also to ensure their proper management and permanent preservation and improvement. Some of the amendments giving freedom to *mutwallis* of *waqf-al-al-aulad*, if accepted, will stand in the way of achieving that end.

(Here the Council adjourned for 15 minutes.)

Mr. PRESIDENT: I think that during the interval it will be possible for the Hon'ble Minister to come to an agreement with dissenting parties in regard to amendments Nos. 131-134.

(After adjournment.)

Mr. PRESIDENT: Mr. Nazimuddin, can we now take up clause 34?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, as no agreement has yet been reached on the controversial question, I would request you to defer the consideration of the amendment No. 134 till to-morrow.

Mr. PRESIDENT: Do you mean that amendments Nos. 132-134 cannot be taken up to-day?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I submit, Sir, that there is some difficulty as regards amendment No. 134.

Mr. PRESIDENT: I am afraid that the majority of the members will not be agreeable to further postponement.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Mr. President, Sir, I do not understand why this most salutary provision of *wakf-al-al-aulad* is proposed to be removed from the Bill. So far as amendment No. 134 is concerned, Government want to put an impediment in the way of the smooth working of the Act and I ask, for whose benefit it is proposed to do so? Is Mr. Wilkinson really in earnest in moving this amendment? I, too, Sir, wish that the *wakf-al-al-aulad* should not be handicapped with some of the obligations that have been unnecessarily proposed. But at the same time if we say that *wakf-al-al-aulad* should not have the same advantage of a reserve fund as the other *wakfs* will have, I think we will be doing a great wrong to those *wakfs*.

Sir, it is very difficult for me to understand the inner secret which has inspired my friend to move an amendment like this. I believe it is a secret which my friend is not prepared to disclose to this House. If there is a difference of opinion, is it not possible for Government to remain neutral, instead of doing positive harm to the cause of all these *wakfs*? Should Government agree to remain neutral, and should the members of this House—especially the Muslim members agree unanimously that the *wakf-al-al-aulad* should be treated favourably, then I would appeal to the Hon'ble Minister to forget all the differences which he might have had with others. (A VOICE: The Hon'ble Minister cannot forget his duty to the Cabinet.) So I submit, Sir, that in the interests of this class of people Government should remain neutral, and if the other sections of the House do so then this question can be solved satisfactrily. I am appealing to the Hon'ble Minister and am simply asking from him justice and nothing more. I hope that if he and the Government would remain neutral everything would be all right.

The two motions of Mr. Wilkinson were put and agreed to.

The motion that Clause 34, as amended in the Council, stand part of the Bill was then put and agreed to.

Clause 35.

Kazi EMDADUL HOQUE: I beg to move that in clause 35 (*1*), in line 1, after the words "does not" the word "negligently" be inserted.

I do not understand in what circumstances a *mutwalli* will be subjected to a demand for damages at the rate of twelve and a half *per cent.* of the dues due to the Government from the estate. Is he going to be subjected to such damages on the ground of the mere fact of the non-payment of such revenue, cess, rates and taxes due to the Government? The non-payment of these things may not be due to negligence on the part of the *mutwalli*, it may be due to some other causes—causes over which he may hardly have any hand. Is it intended that the *mutwalli* should make good these payments notwithstanding? It is not due to negligence on his part, so I do not understand why the *mutwalli* should be subjected to these damages. If a *wakf* property be held under leases by several tenants, and the tenants do not pay, and for the matter of that the *mutwalli* is not in a position to pay revenue, rates and taxes to the Government. Will it in that case be justifiable on the part of the Commissioner to recover damages from the poor *mutwalli*? Certainly not. So, if my amendment is accepted, I think much of the anomaly will go, because in a case where the *mutwalli* will be neglecting his duty in the matter of payment of rates and taxes, he will be liable, and where it is not due to his negligence, he will not be liable.

Khan Bahadur Maulvi AZIZUL HAQUE: I think my friend has misunderstood the position. Where the *mutwalli* refuses to pay or does

not pay, then the Commissioner will be able to demand damages, but so far as damages are concerned, the provision is not "shall" but "may". That being the case, if the *mutwalli* can satisfy the Commissioner that it is not due to any negligence on his part that he has not been able to realise from the tenants, no Commissioner will demand damages from him. The power is in the hands of the Commissioner who will recover both cases of neglect and non-neglect, and damages can, I think, only be realised where the Commissioner is satisfied that the *mutwalli* refuses to or does not pay.

The motion was by leave of the House withdrawn.

Maulvi ABUL QUASEM: I beg to move that to clause 35 (*1*), line 6, after the word "*mutwalli*" at the end, the word "personally" be added.

Maulvi ABDUL GHANI CHOWDHURY: I accept this.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I would ask the mover to withdraw this. It is not at all necessary.

The motion was by leave of the Council withdrawn.

The motion that clause 35 stand part of the Bill was then put and agreed to.

Clause 36.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 36, line 5, after the word "person", the words "or a committee" be inserted.

If the definition of the word "*mutwalli*" is looked into, it will be seen that the word means also a committee. Therefore in this clause where power is given to the Board to appoint *mutwallis*, it is only proper that the Board should be given the power to appoint not only a person but also a committee as *mutwalli* in the circumstances stated in the clause.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I do not think this is necessary at all. The committee is generally appointed to assist the *mutwalli*. There may be two or three persons in the committee. A committee can never be a *mutwalli*.

The motion was put and lost.

The motion that clause 36 stand part of the Bill was then put and agreed.

Clause 37.

The motion that clause 37 stand part of the Bill was then put and agreed to.

Clause 38.

Mr. H. R. WILKINSON: I beg to move that for clause 38, the following clause be substituted, namely:—

"38. (*1*) The Commissioner may grant inspection and copies of proceedings or other records of the Board or the Commissioner on payment of such fees as may be prescribed by the Board and subject to such conditions as he may determine. Copies shall be certified by the Commissioner, or by such officer as may be authorised in that behalf by the Commissioner, in the manner provided in section 76 of the Indian Evidence Act, 1872. Ins of 1 and of c I of

(*2*) Any person interested in a *wakf* other than a *wakf-al-al-aulad* shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the *wakf*.

(*3*) In the case of a *wakf-al-al-aulad* a beneficiary shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the wakf.

(*4*) In the case of any other *wakf*, a stranger to the *wakf* shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the *wakf*:

Provided that the Commissioner shall not grant such permission without consulting the *mutwalli* of the *wakf*."

The principle underlying this amendment is the distinction between *wakf-al-al-aulad* and private *wakf* as before. In the case of the former it is only beneficiaries who are to receive copies of proceedings, and in the case of other *wakfs*, other persons interested can see them.

Maulvi ABDUL GHANI CHOWDHURY: I oppose this.

The motion was put and agreed to.

The motion that clause 38 as amended stand part of the Bill was then put and agreed to.

Clause 39.

The motion that clause 39 stand part of the Bill was then put and agreed to.

Clause 40.

Mr. H. R. WILKINSON: I beg to move that in clause 40 for the word "Board" wherever it occurs the word "Commissioner" be substituted.

I do not think it is necessary to make any speech on this.

Khan Bahadur Maulvi AZIZUL HAQUE: No, I think it will be better if Mr. Wilkinson would move for the deletion of the Board altogether. The rights attached to the Board having been deleted, makes us nervous as to whether any power at all should be left to the Board.

Maulvi ABDUL GHANI CHOWDHURY: I oppose this.

The motion was put and agreed to.

Mr. H. R. WILKINSON: I beg to move that sub-clause (5) of clause 40 be omitted.

It has already been decided in connection with clause 27 that the employment of the Commissioner of a Division and the Collector of a district should be subject to any rules laid down by the Local Government in this behalf, and, until these rules are framed, I fail to see how you can empower the Commissioner to send extracts from the application to every district Collector in whose jurisdiction a *wakf* is situated.

The motion was put and agreed to.

Kazi EMDADUL HOQUE: I beg to move that in clause 40 (8), in line 2, after the word "language" the following words be inserted, namely:—

"or in the vernacular of the place in which the *wakf* property is situate or in a language with which the person making the application is familiar."

The application for enrolment shall have to be made by the *mutwalli*. Now we cannot expect that the *mutwalli* in all cases will be conversant with the English language, and therefore it will not be desirable that he should be compelled to write the application in the English language. He should be given freedom to write a petition in his own language or in any language with which he is conversant, so it would be cruel on the part of the Commissioner to ask the poor *mutwalli* to draft the application in the English language. I therefore appeal to the Hon'ble Minister in charge to kindly accept this amendment.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I find that amendment 160 or 161 which has the words "and Bengali" will be more acceptable to us.

It is difficult to accept "the vernacular" because anybody can claim to apply in his own vernacular. For Darjeeling District it will have to be Tibetan or Nepalese. We are prepared to accept Maulvi Hussain's amendment.

Maulvi MUHAMMAD HOSSAIN: I beg to move that in clause 40 (*8*), in line 2, after the word "English" the words "or Bengali" be inserted.

Maulvi ABDUL CHANI CHOWDHURY: I accept the amendment.

Kazi Emdadul Hoque's motion was then by leave of the House withdrawn.

The motion of Maulvi Muhammad Hossain was then put and agreed to.

Maulvi ABUL QUASEM: I beg formally to move that in clause 40 (*8*), second paragraph, line 1, after the word "applicant" the words "omits or" be inserted and after the word "refuses" the words "on notice" be inserted.

Maulvi ABDUL CHANI CHOWDHURY: I accept the amendment.

The motion was put and agreed to.

The motion that clause 40 as amended stand part of the Bill was then put and agreed to.

Clauses 41 and 42.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in sub-clause (*f*) of clause 41 for the word "Board" the word "Commissioner" be substituted.

It is consequential, and I hope the House will accept it.

Maulvi ABDUL CHANI CHOWDHURY: I beg to oppose the amendment.

The motion was put and agreed to.

The motion that clause 41, as amended, and clause 42, stand part of the Bill was then put and agreed to.

Clause 43.

Maulvi ABUL QUASEM: I beg to move that in clause 43 (*1*), line 2, after the word "retirement" the words "or removal" be inserted.

It is only consequential.

Maulvi ABDUL CHANI CHOWDHURY: I accept the amendment.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I have no objection to the amendment being accepted.

The motion was then put and agreed to.

The motion that clause 43 as amended stand part of the Bill was then put and agreed to.

Clause 44.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in sub-clause (*a*) of clause 44, in line 4, after the words "every *mutwalli*" the words "of a *wakf* other than a *wakf-al-al-aulad*" be inserted.

Sir, this is another distinction between public *wakfs* and other *wakfs*. There is a separate amendment for *wakfs-al-al-aulad*. That will explain the whole thing, and I hope the House will accept the amendment.

Maulvi ABDUL CHANI CHOWDHURY: I oppose the amendment.

The motion was then put and agreed to.

Maulvi ABUL QUASEM: I beg to move that in clause 44 (*a*) line 6, after the word "form" the words "and language" be inserted.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I have no objection to the amendment being accepted by the House.

The motion was then put and agreed to.

The motion that clause 44 as amended stand part of the Bill was then put and agreed to.

Clause 45.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that after sub-clause (*1*) of clause 45, the following be inserted, namely:—

"(*1a*) The auditor may, by written notice, require the production before him of any document, or require the attendance before him of any person responsible for the preparation of the account, to enable the auditor to obtain such information as he may consider necessary for the proper conduct of his audit."

I also move that to sub-clause (*3*) of clause 45, the following words be added, namely:—

"The report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person."

Sir, we have got expert advice that these two amendments are necessary under the certificate procedure.

Maulvi ABDUL CHANI CHOWDHURY: I accept the amendments.

The motions were then put and agreed to.

The motion that clause 45 as amended stand part of the Bill was then put and agreed to.

Clause 46.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in line 1 of clause 46, for the word "Commissioners" the word "Commissioner" be substituted.

Sir, it is a printing mistake.

Maulvi ABDUL CHANI CHOWDHURY: I accept the amendment.

The motion was then put and agreed to.

The motion that clause 46 as amended stand part of the Bill was then put and agreed to.

Clause 47.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in sub-clause (*1*) of clause 47, after the words and figures "report under section 45" the following be inserted, namely:—

"unless such certificate is modified or cancelled by the Commissioner by an order made under section 46, and every sum due on a modified certificate."

This is a consequential amendment.

Maulvi ABDUL GHANI CHOWDHURY: I accept the amendment.

The motion was put and agreed to.

The motion that clause 47 as amended stand part of the Bill was then put and agreed to.

New Chapter VA.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that after Chapter V the following new Chapter be inserted, namely:—

"CHAPTER VA.

Statements of wakfs-al-al-aulad.

Statements of wakfs-al-al-aulad.

47A. (*1*) Before the 15th day of July next following the day on which the application referred to under section 40 has been made and thereafter before the 15th day of July every year, every *mutwalli* of a *wakf-al-al-aulad* shall prepare and furnish to the Commissioner a statement in respect of the period of twelve months ending on the thirty-first day of March or on the last day of the Bengali year or, as the case may be, in respect of that portion of the said period during which the provisions of this Act have been applicable to the *wakf*, containing the following particulars:—

(*i*) the gross income from the *wakf* properties;

(*ii*) the amount of the Government revenue and cesses and of all rents and taxes paid in respect of the *wakf* properties;

(*iii*) the expenses incurred in the realisation of the income of the *wakf* properties;

(*iv*) the amount paid under the *wakf* for—

(*a*) the salary of the *mutwalli* and allowances to individuals;

(*b*) purely religious purposes;

(*c*) charitable purposes; and

(*d*) any other purposes.

(2) If the Commissioner has reason to doubt the substantial accuracy of the statement submitted under sub-section (*1*) he may examine the statement and call for the explanation of any person in regard to such statement and shall pass such orders on such statement as he thinks fit."

This only provides for the submission of a statement by the *mutwalli* of *wakf-al-al-aulad* and under section 29 a beneficiary has the right to that unless there has been a substantial inaccuracy in the statement, amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, may I ask the Hon'ble Ministers a few questions? My questions are:—

(1) What is the reason that it has not been drafted on the line of section 44? In section 44 the language is that the *mutwalli* shall prepare and furnish to the Commissioner a full and true statement of accounts. Surely, that language could have been incorporated here also without any difficulty.

(2) In section 44 there is a form prescribed by the Board. Surely, that could have found a place here also.

(3) What is the meaning of "purely religious purposes" and of "charitable purposes?" Why the word "purely" has been brought in? Is there any reason why it should not be deleted?

(4) What is the meaning of "substantial accuracy?" I feel difficulty to find it.

Lastly, it seems that the draft has been prepared in such a way that unless there has been a substantial inaccuracy in the statement, the Commissioner has no right to see that document even. Am I to understand that if the Commissioner has no reason to doubt the accuracy of the statement, he has no right to see it?

I certainly feel that so far as these things are concerned they might be improved, and after all when it is passed into law, the clause should emanate in such a form that the meaning might be quite clear. Therefore I think it would be better if the Hon'ble Minister agrees

and if you, Sir, also agree that I suggest that a full and true statement in the form prescribed by the Board containing the following particulars should be furnished to the Commissioner——

Mr. PRESIDENT: Is it your intention to put this off?

Khan Bahadur Maulvi AZIZUL HAQUE: Yes, Sir, if you agree.

Mr. PRESIDENT: In any case, I do not think it is any good taking this up to-night. I agree to postpone the consideration of this amendment.

Adjournment.

The Council was then adjourned till 3 p.m. on Thursday, the 22nd February, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Thursday, the 22nd February, 1933, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 96 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Military march in the Contai and Tamluk subdivisions, Midnapore.

*80. **Mr. R. MAITI:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state the object with which the military march in charge of the executive and police officers has been organised in all the *thanas* of the Contai and Tamluk subdivisions in the district of Midnapore?

(*b*) Is the Hon'ble Member aware of the allegations that are being made that the people are being forced by the local authorities to erect gates on public roads and decorate their houses and shops at their own expenses for showing honour to the soldiers?

(*c*) Is the Hon'ble Member also aware of the allegations—

(*i*) that the villagers have been forced to raise subscriptions for supplying the soldiers with foodstuffs during their route march throughout the *mufassal;* and

(*ii*) that some private persons are being coerced to supply rich *dallies* consisting of rare fruits and rich wines and get up tea and dinner parties for the entertainment of the soldiers, the executive and police officers, etc.?

(*d*) Is the Hon'ble Member also aware that during the march of the military in the *mufassal* there have been plenty of house searches going on, in course of which many valuable articles have been damaged and it is reported that the people are being forced to salute the Union Jack and subjected to assaults and various other indignities?

(*e*) Will the Hon'ble Member be pleased to state under whose orders and under what authority these acts have been done?

(*f*) Are the Government considering the desirability of instituting an open and independent inquiry into the incidents referred to above and of punishing those who are responsible for such illegal acts?

MEMBER in charge of POLITICAL DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) The principal object of these marches is to enable the people of villages in the interior to meet the troops and to appreciate their high standard of discipline, efficiency and mobility and to show that Government have at their disposal ample resources for the protection of all loyal and law-abiding persons.

(*b*) No such allegations have been brought to the notice of Government.

(*c*) (*i*) and (*ii*) No such allegations have been brought to the notice of Government or the district authorities. All supplies required for the troops are duly requisitioned in accordance with rule and paid for in cash on the spot.

A number of substantial and loyal gentlemen have voluntarily arranged entertainments at their own expense.

(*d*) House searches have been made by the police during these operations but in no case by the troops. No avoidable damage has been caused. Flag-saluting ceremonies have been held in many villages and have been generally well attended by the people.

The only specific complaints that have come to the notice of Government alleging that certain individuals were forced to salute the flag or were subjected to violence in that connection, have been inquired into and have been found so full of misstatements as to be wholly unworthy of credence.

(*e*) and (*f*) Do not arise.

Babu HEM CHANDRA ROY CHOUDHURI: With reference to (*d*), what sort of damage has been done?

The Hon'ble Mr. R. N. REID: I cannot give details of the damage done; it was unavoidable damage.

Mr. P. BANERJI: With reference to (*a*), is it not a fact that people in general are now losing fear of the military on account of these marches?

The Hon'ble Mr. R. N. REID: I am not aware that they entertained any feelings of fear before.

Dr. NARESH CHANDRA SEN GUPTA: With reference to answer (*c*) (*i*) and (*ii*), if any such allegations are made, would they be inquired into?

Mr. PRESIDENT: I do not allow that question.

Dr. AMULYA RATAN GHOSE: With reference to (*d*), will the Hon'ble Member be pleased to tell the House what these flag-saluting ceremonies are and how they are performed?

The Hon'ble Mr. R. N. REID: Perhaps, the hon'ble member has seen the Proclamation Parade held in Calcutta on the first day of January every year; the flag-saluting ceremony is something like that —only the former is in a large scale and the latter is in much smaller scale.

Mr. NARENDRA KUMAR BASU: With reference to paragraph 2 of answer (*d*), was there any force used to make people salute the flag?

The Hon'ble Mr. R. N. REID: Not that I am aware of.

Mr. NARENDRA KUMAR BASU: It is stated in the answer that there have been mis-statements as to be wholly unworthy of credence: Will the Hon'ble Member be pleased to state whether there is any substratum of truth in those allegations?

The Hon'ble Mr. R. N. REID: Not that I am aware of.

Dr. NARESH CHANDRA SEN GUPTA: With reference to answer (*d*), do I understand that Government have not made any inquiries into the allegations because they were full of mis-statements?

The Hon'ble Mr. R. N. REID: No, Sir.

Dr. AMULYA RATAN GHOSE: Was any notice served to the people to attend the flag-saluting ceremony?

The Hon'ble Mr. R. N. REID: Notices were issued.

Mr. R. MAITI: With reference to answers (*b*) and (*c*), was any inquiry ever made by Government regarding these allegations?

The Hon'ble Mr. R. N. REID: Yes, Sir.

Motor vehicle taxes.

***81. Srijut TAJ BAHADUR SINGH:** (*a*) Is the Hon'ble Minister in charge of the Local Self-Government Department aware—

(*i*) that notice of expiration of tax is not given to motor owners; and

(*ii*) that this causes some harassment to the motor owners in the shape of paying of fines or penalties?

(*b*) Are the Government considering the desirability of making a rule for the issuing of notices by post-cards to individual owners of motor vehicles informing them about the expiration of tax at least a fortnight before the date of expiration?

MINISTER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (*a*) (*i*) Yes.

(*ii*) No.

(*b*) No. No such procedure is contemplated in the Act.

Augmentation grant to the Khulna District Board.

***82. Maulvi ABUL QUASEM:** (*a*) Is the Hon'ble Minister in charge of the Local Self-Government Department aware that during the last year and the current year the District Board of Khulna has been given much less augmentation grant than in previous years?

(*b*) Is it not a fact that the District Magistrate of Khulna has remarked in his notes of the last inspection made by him that the so-called prosperity of the board is only due to the cautious budgeting adopted by the board?

(*c*) Is the Hon'ble Minister also aware that on account of the reduction of the rate of road cess and public works cess and of the economic distress the income of the District Board of Khulna has been much reduced and is totally inadequate to meet the demands of communications, sanitation, medical relief, education and others?

(*d*) Are the Government considering the desirability of increasing the augmentation grant for the coming year to the District Board of Khulna so as to compensate for the deficiencies of last year and the current year?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) A statement showing the grants made in recent years is laid on the table.

(*b*) The District Magistrate remarked that the board's apparent prosperity seemed to be due "to a considerable extent" to cautious budgeting.

(c) No figures as to the effect of the reduction in the rate are yet available.

(d) No. The augmentation grant is distributed after consideration of the needs of all the districts in each division.

Statement referred to in the reply to starred question No. 82 (a) regarding Khulna District Board augmentation grants.

		Rs.
1928-29	...	38,085
1929-30	...	38,541
1930-31	...	31,552
1931-32	...	30,161
1932-33	...	38,255
1933-34	...	31,000

Silting up of the Saraswati river.

*83. **Dr. NARESH CHANDRA SEN GUPTA:** (a) Is the Hon'ble Member in charge of the Irrigation Department aware that the silting up of the Saraswati river has affected the healthiness of the Janai-Begumpur area in the Hooghly district?

(b) If the answer to (a) is in the affirmative, do the Government contemplate taking any steps for the reclamation of the river?

MEMBER in charge of IRRIGATION DEPARTMENT (the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim Ghuznavi, of Dilduar): (a) Malaria is increasing in the locality, but it is doubtful whether this is entirely due to silting up of the Saraswati river.

(b) It is proposed to continue to flush the river with water from the Eden Canal or the Damodar Canal.

MUNINDRA DEB RAI MAHASAI: With reference to answer (a), will the Hon'ble Member be pleased to state the reasons for his coming to that conclusion?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM GHUZNAVI, of Dilduar: The report of the local officers.

Mr. NARENDRA KUMAR BASU: With reference to answer (a), is it not a fact that the increase of malaria is partly due to silting up of the river?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM GHUZNAVI, of Dilduar: It cannot be differentiated.

Maulvi ABDUL KARIM: How long has the river been flushed with the canal water? Has it produced any appreciable effect on the health of the locality?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM GHUZNAVI, of Dilduar: As far as I am aware the river has been flushed for a long time. It has produced appreciable effect as far as I am aware.

Dr. AMULYA RATAN GHOSE: Is the Hon'ble Member aware that according to the opinion of the Public Health Department malaria is largely due to the silting up of this river?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM GHUZNAVI, of Dilduar: I am not aware of any such opinion.

Grants to circle schools.

*84. **Rai Bahadur JOGESH CHANDRA SEN:** (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to state—

(*i*) whether it is a fact that the Director of Public Instruction, Bengal, informed Mr. Akhil Chandra Datta, then a member of this Council, by his letter No. 7745-G./3C-1G-27, dated the 5th September, 1927, that "the grants sanctioned for schools functioning on the abolition of circle schools are not subject to renewal year by year" and that "the schools in receipt of these grants are not required to go through any of the formalities contemplated in the grant-in-aid rules for schools";

(*ii*) whether it is a fact that the Director of Public Instruction by his letter No. 2814-18P./3C-1P-25, dated the 14th August, 1925, informed the Divisional Inspectors of Schools that grants to such defunct circle schools are not subject to renewal year by year?

(*b*) If the reply to (*a*) (*i*) is in the affirmative, are the schools functioning on the abolition of circle schools required to submit year after year—

(*i*) applications for grants in the form prescribed in the grant-in-aid rules for schools in the Bengal Education Code; and

(*ii*) a deed of acceptance of the grant to the Department of Education on a twelve annas stamped paper, as is done by other aided secondary schools?

(c) What were the original terms and conditions on which permanent grants to such defunct circle schools were sanctioned so far as their private management was concerned?

(d) Has there been any violation or modification of these terms and conditions? If so, what?

MINISTER in charge of EDUCATION DEPARTMENT (the Hon'ble Mr. Khwaja Nazimuddin): (a) (i) Yes. A copy of the letter is placed on the table.

(ii) No. A copy of the letter is placed on the table.

(b) (i) Yes. A school must apply for a grant, and an Inspector must know whether the condition of the school is satisfactory.

(ii) No.

(c) There were no specific terms or conditions laid down. The member's attention, however, is invited to the following sentence in the letter quoted in question (a) (i): "The department, however, is fully competent to stipulate any condition for the better arrangement and control of these schools functioning for the defunct circle schools."

(d) Does not arise.

Copy of letter referred to in the reply to starred question No. 84 (a) (i).

No. 7745-G./3C-16-27, dated Calcutta, the 5th September, 1927.

From—The Director of Public Instruction, Bengal,

To—Akhil Chandra Datta, Esq., M.L.C., 45/4, Chakrabere Road, South, Bhowanipur, Calcutta.

In continuation of this office letter No. 75144., dated the 29th August, 1927, I have the honour to state that the grants sanctioned for schools functioning on the abolition of circle schools are not subject to renewal year by year. Schools in receipt of these grants are paid from the provincial lump allotment provided in the "Education" budget and are not required to go through any of the formalities contemplated in the grant-in-aid rules for schools. The department, however, is fully competent to stipulate any condition for the better management and control of these schools functioning for the defunct circle schools.

A copy of this letter is being endorsed to the Inspector of Schools, Chittagong Division, for information and guidance.

Copy of letter referred to in the reply to starred question No. 84 (a) (ii).

No. 2814-18P./3C-1P-25, dated Calcutta, the 14th August, 1925.

From—The Director of Public Instruction, Bengal,

To—The Divisional Inspectors of Schools.

In continuation of this office memo. Nos. 3991-95P., dated the 23rd December, 1924, I am directed to state that grants sanctioned in Government order No. 3835 Edn., dated the 22nd December, 1924, to schools functioning in place of the defunct circle schools are permanent, and that the Accountant-General, Bengal, has been requested in this office memo. No. 138P., dated the 9th January, 1925, to issue necessary instructions for payment of the grants every year. A copy of memo., together with an extract from its enclosure, is enclosed herewith for information.

Babu HEM CHANDRA ROY CHOUDHURI: With reference to answer (*a*) (*ii*), will the Hon'ble Minister be pleased to explain what the Director of Public Instruction meant in his reply to Mr. Akhil Chandra Datta regarding these grants?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: These grants are permanent in the sense that they do not require renewal every year and they do not have the same conditions as are attached to the grant-in-aid in ordinary schools. In my answer (*c*), I have drawn the attention of the members to the conditions which the Director of Public Instruction imposed on the schools. Subject to those conditions, the conditions regarding the grant-in-aid do not apply to these schools.

Maulvi ABDUL KARIM: Have these schools been functioning as well as the old circle schools to meet local requirements?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: These schools are certainly better than the old schools.

Maulvi ABDUL KARIM: Is the grant-in-aid system still continued?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Yes.

Mr. NARENDRA KUMAR BASU: Mr. President, Sir, may I draw your attention to the notice for the adjournment of the House which I have handed over to you a few minutes ago?

Mr. PRESIDENT: I told you that you should see me to-morrow about it.

NON-OFFICIAL BUSINESS

NON-OFFICIAL BILLS

The Bengal Wakf Bill, 1933.

New Chapter VA.

Mr. PRESIDENT: Khan Bahadur, are you ready with your short-notice amendment?

Khan Bahadur Maulvi AZIZUL HAQUE: I am not sure whether the Government have prepared an amendment to move. If they have not, I will move my short-notice amendment.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: But I should like the Khan Bahadur to move his short-notice amendment which I am prepared to accept.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that after Chapter V the following new chapter be inserted, namely:—

"CHAPTER VA.

STATEMENTS OF WAKF-AL-AL-AULAD.

47A. (*1*) Before the 15th day of July next following the day on which the application referred to under section 40 has been made and hereafter before the 15th day of July every year, every *mutwalli* of a *wakf-al-al-aulad* shall prepare and furnish to the Commissioner a true statement in respect of the period of twelve months ending on the 31st day of March or on the last day of the Bengali year, or, as the case may be, in respect of that portion of the said period during which the provisions of this Act have been applicable to the *wakf*, containing the following particulars:— **Statements of *wakf-al-aulad*.**

(*i*) the gross income from the *wakf* properties;

(*ii*) the amount of the Government revenue and cesses and of all rents and taxes paid in respect of the *wakf* properties;

(*iii*) the expenses incurred in the realisation of the income of the *wakf* properties;

(*iv*) the amount paid under the *wakf* for—

(*a*) the salary of the *mutwalli* and allowances to individuals;

(*b*) purely religious purposes;

(*c*) charitable purposes; and

(*d*) any other purposes.

(2) If the Commissioner has reason to doubt the accuracy of the statement submitted under sub-section (1) he may after examining the statement call for the explanation of any person in regard to such statement and shall pass such orders on such statement as he thinks fit."

I move this in substitution of the amendment which was moved by the Hon'ble Member yesterday.

The motion was put and agreed to.

Clause 31.

Mr. PRESIDENT: What about clause 31 which was put off?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: May I have another 15 minutes' time, Sir?

Mr. PRESIDENT: Very well. Then I go on to clause 48.

Clause 48.

Mr. PRESIDENT: Maulvi Abul Quasem, will you move your motions 182 and 183 together and make one speech?

Maulvi ABUL QUASEM: I have got a special favour to ask of you, Sir. I shall of course move my amendments Nos. 182 and 183 together, but as regards sub-clause (3) to clause 48, I should like to move a short-notice amendment with your permission.

Mr. PRESIDENT: But have you consulted the member in charge and the Hon'ble Minister?

Maulvi ABUL QUASEM: I have spoken to the member in charge.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, I have seen the amendment, and it seems to me a highly technical matter involving legal points. I think we had better stick to the wording of the Bill which seems to us to be correct.

Mr. PRESIDENT: Maulvi Sahib, do you approve of the short-notice amendment?

Maulvi ABDUL GHANI CHOWDHURY: I do not approve of it, Sir.

Mr. PRESIDENT: Maulvi Abul Quasem, you had better not move it. You can move 182 and 183 together and make one speech only.

Maulvi ABUL QUASEM: I should like also to take 185 along with the other two motions because these three motions relate to the same thing.

Mr. PRESIDENT: You can do that and make one speech.

Maulvi ABUL QUASEM: As regards 183 I ask your permission to make a very slight verbal alteration. I should like to substitute the word "property" for the word "lands" in both the places in which they occur.

Mr. PRESIDENT: Yes, I allow you to do that.

Maulvi ABUL QUASEM: I move that in clause 48(*1*), line 4, for the words "five years," the words "three years in the case of agricultural property or one year in the case of non-agricultural property" be substituted.

I also move that in clause 48(*1*), in line 1, for the brackets, figures and word "(*2*), (*3*) and (*4*)" the following be substituted, namely:—

"(*2*) and (*3*)."

I also move that clause 48(*4*) be omitted.

Sir, the whole purpose of this Bill, if I have understood it aright, is to exercise effective control over the action of the *mutwalli*. I did not understand that there was any desire on the part of the member in charge and supporters of this Bill that any departure would be made from the existing law. The existing law as regards the grant of leases is this: if the property is agricultural, the *mutwalli* cannot grant lease exceeding three years without the permission of the civil court or the District Judge. If the property is non-agricultural then the *mutwalli* has no right to grant lease for a term exceeding one year without such permission; but by this clause, we are going to depart from the present law and practice and are going to give the *mutwalli* powers to grant leases of any property whether agricultural or non-agricultural without permission of the civil court up to five years. If the term exceeds five years, then only he will have to take sanction of the Commissioner. In this respect there is going to be a departure from the existing law and larger powers are being given to the *mutwalli*. I do not think that this was the intention of the mover and the supporters of the Bill.

There is another objection which is this: By this clause we are taking away the power which is at present enjoyed by the Kazi who is the District Judge, to sanction transfers of *wakf* property and we are transferring it to the Commissioner. We do not say in so many words that the civil courts will have no jurisdiction in the matter of sanctioning mortgage, sale, etc., of *wakf* property. But we say by implication that the civil court will have no jurisdiction whatever in regard to sale, mortgage, etc., of a *wakf* property, as the only sanctioning authority henceforth will be the Commissioner and not the civil court. I am afraid there is a conflict of jurisdiction here. If it were expressly provided that the civil court will have no jurisdiction, it would be one thing, but

when there is no such express provision there is sure to be a conflict. In certain cases the intention has been made clear—for instance, in clause 33. There it is provided that the *mutwalli* in certain cases may approach the Commissioner who can refer him to the civil court if the matter appears to him to be a complicated one. I may also refer to clause 36. There also in the case of a *wakf* of which there is no *mutwalli* the Board has been given powers to make a temporary arrangement for the carrying on of the work of the *mutwalli* subject to any order of a competent court. I would also refer to clause 72. There the powers of the civil court under sections 92 and 93 are kept intact. Only the Commissioner is empowered to move the civil court to get any of the reliefs as mentioned in those sections. So, Sir, it would appear that we are going to retain all the powers of the civil court. But, in this particular clause you are going to deprive the Kazi or the civil court of certain powers by implication. Sir, I would refer to section 92 of the Civil Procedure Code. With your permission, I may read it out as many members may not be familiar with it:—

Public charities.

"92. (S. 539.) (*1*) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit whether contentious or not, in the principal civil court of original jurisdiction or in any other court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

(*a*) removing any trustee;

(*b*) appointing a new trustee;

(*c*) vesting any property in a trustee;

(*d*) directing accounts and inquiries;

(*e*) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(*f*) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(*g*) settling a scheme; or

(*h*) granting such further or other relief as the nature of the case may require.

(*2*) Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in sub-section (*1*) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section."

Sir, I should like to draw particular attention to clause (*f*). Under clause 72 of the Bill you are clearly contemplating exercises of all the powers as given to the civil courts under sections 92 and 93 of the Civil Procedure Code in the circumstances therein provided for, and one of the powers is to authorize sale, mortgage, exchange or lease of *wakf* property. Unless you make it specifically clear I am afraid there will be conflict of jurisdiction between the Commissioner and the civil court so far as sale, mortgage, etc., are concerned. You say that the powers of the civil court under section 92 are already there, only the Commissioner will have the power to move the civil court under clause 72. Section 92 says that in certain contingencies the court may allow *wakf* property to be sold, mortgaged, etc., but here you say that no such lease for over five years or sale would be valid except with the previous sanction of the Commissioner. I submit very respectfully and with due diffidence and subject to correction that the legal aspect of the question has not been fully gone into so far as this clause is concerned. That is why I wanted to move a short-notice amendment in order to do away with the anomaly that is likely to arise. But, Sir, you have been pleased not to allow me to do so. Sir, if you would kindly reconsider your decision and give me a little time to consult the Hon'ble Mr. Nazimuddin——

Mr. PRESIDENT: I think the Hon'ble Minister has already expressed his opinion on it.

Maulvi ABUL QUASEM: He may perhaps revise his opinion after hearing me. I am as anxious as anybody else in this House to see that the Bill is passed and, therefore, I want to make it as faultless as possible. Mine has not been an attitude of obstruction.

Mr. PRESIDENT: But there is no indication in that direction and so no good could come out of it.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I think I shall be able to clear up the difficulty from which Maulvi Abul Quasem is suffering.

Maulvi ABUL QUASEM: So far as sub-clause (*f*) is concerned, I was going to suggest that it should be deleted. My whole object is that in the matter of permission to sell, mortgage, exchange or let, power should continue to be vested in the Kazi or the civil courts as well as in the Commissioner for facility of working the Act and for the convenience of all parties. Authority is given to the Commissioner to sanction mortgage, sale, lease or gift. The necessary application will have to be made to the Commissioner for getting permission. He will issue notices to the necessary parties and permission will be given or withheld. Sir, we have *wakf* properties situated in the distant parts of this province and when they have to be dealt with it will take a long time to do so as the Commissioner's office will be situated in Calcutta, and as there is no

provision in the Bill that the Commissioner will be going on circuit to the *mufassal*, there is little doubt that he will have to delegate his powers to the Collector or to others. The power is now enjoyed by the civil court; if alternatively to the power that is now going to be given to the Commissioner powers were also retained in the civil courts then the whole difficulty might be avoided. After all, Sir, some delegation will have to be made to deal with *wakfs* lying in distant places, whether that delegation is made to the Commissioners of divisions or to any other officers or persons whom the Commissioner may nominate. But if this power which is now vested in the civil courts were continued to be vested in the civil courts as well as in the Commissioner, people might choose either to go to the civil court or to the Commissioner according to their convenience and then the whole difficulty might be avoided. And, Sir, since under clause 69 of the Bill it is being made compulsory to serve a notice upon the Commissioner of every suit or proceeding in respect of any *wakf* property or a *mutwalli* and the Commissioner will have every opportunity of submitting his views before the court, there should no longer be any objection to the exercise of powers by the court. There will no longer be any chance of collusion or fraud and of the interest of the *wakf* being adversely affected. So far as clause 4 is concerned, Sir, here a wide power is being given; under the present Bill, as I have already stated, if a property happens to be an agricultural land, the *mutwalli* may not grant a lease without the permission of the civil court for a term exceeding three years; but under sub-clause (*f*) you are going to give the *mutwalli* the power to grant a permanent lease. (Cries of "No, no.") Yes, I maintain it is a permanent lease which the *mutwalli* is being empowered to grant. The lease may very well be *mokarari mourahsi*. Let me read the section. This is the language of the section:—

"Nothing in this section shall apply to any lease of land by a *mutwalli* for the purpose of cultivation by the lessee or by the members of his family, etc.," this is taken *verbatim* from section 5 of the Bengal Tenancy Act, where *raiyat* is defined. I might read out the whole definition:—

"A *raiyat* means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself or by members of his family or by servants or labourers or with the aid of partners and includes also the successors in interest of persons who have acquired such a right."

In the *mufassal* most of the *wakf* properties consist of agricultural land and if the *mutwalli* is given the power of granting permanent leases of agricultural *raiyati* holdings without the consent of the Kazi or the civil court, very much wider power is going to be given him than he at present possesses. It is quite likely that he may abuse those powers in his

personal interest; in order to get a big *salami* he may fix a low rate of rent, and he may take good care that the real nature of the transaction may not be found out, and in this way he will be aggrandising himself at the cost of the *wakf*. Sir, I am emphatic in my view that clause 4 should be altogether deleted. If the Bill is to do any good to the community then every available piece of the income from *wakfs* should be properly spent and not a single farthing of such income should be allowed to be squandered, misappropriated or wrongly spent. Sir, what is the *raison detre* behind this sub-clause? You are allowing the *mutwalli* to grant permanent lease of *raiyati* holdings, and thus giving him a chance of making money out of it for himself. I therefore earnestly beseech the House to calmly consider whether the passing of sub-clause (*4*) of clause 48 will not derogate from the utility, scope and purpose of the Bill that is before us.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, it seems to me that my friend has been a little carried away by his desire to see a certain state of things instead of seeing the section itself. Now, Sir, I would analyse clause 48, which is divided into four parts. The first part says that there is a certain bar to the transfer of a *wakf* property by way of sale, gift, exchange or lease for a term exceeding five years, and then follow certain validating acts with which we are not concerned. Our other main concern is that nothing in this section will apply to any such transfer made for the preservation of the *wakf* property if a certificate is obtained from the Commissioner within six months from the date of the transfer that such transfer was proper and necessary. Now, Sir, is there anything here which abrogates the Muhammadan law? If the *mutwalli* has a right under the present Muhammadan law to give lease of agricultural holdings in a certain manner that power is not certainly totally taken away by this clause. That is the fundamental mistake that my friend is committing. So far as sub-clause (*4*) is concerned it cannot, by any stretch of imagination or by the farthest extent of interpretation, be intended to mean or could possibly carry the meaning, that you are giving a substantial right to the *mutwalli* to grant a permanent transfer if he chooses, whereas at present he has no such power. On the other hand, I take it that when he says that nothing in this section shall apply to any lease of land, it means that so far as these things are concerned they will be governed by the ordinary provisions of the Muhammadan law, as affected by legislation or by decisions of the High Court. (Question.) You might question, but that is how everybody will take it. If that is so, let us see to what extent section 1 affects the present position. My friend has quoted section 92 of the Civil Procedure Code. What does section 92 say? It is a suit by or on behalf of public for framing a scheme for the administration of a trust property. So far as this present section of this Bill is concerned, it says that in so far as a lease for a

period exceeding five years is concerned certain things will be done. Now, Sir, what is the position if the *mutwalli* is to give lease for a term, say, of three years. Under section 48, so far as this Bill is concerned, if the *mutwalli* wants to give lease for a period exceeding five years, he will come under this povision. But if he gives lease for three years only he will have to abide by the ordinary provisions of the Muhammadan law. That is the ordinary interpretation of this section. The State intervenes only where the lease is for a term exceeding five years; it does not intervene in cases where the lease is for a term below five years, when however the ordinary law will stand. Do you mean to say that by introducing this clause we are abrogating the Muhammadan law or any other statutory provision affecting transfer and lease? So far as five years are concerned, the *mutwalli* is to do a certain thing in a certain manner and if this interpretation is correct, I take it that this provision means that in so far as a lease exceeding five years is concerned, it will have to be granted with the previous sanction of the Commissioner and that so far as the ordinary lease is concerned this section has nothing to do with it. That is the ordinary interpretation of this section. Probably my friend will inquire why this provision is going to be made. It may be that it is going to be made purely for the sake of convenience, because, if the *mutwalli* is given the power to grant a lease for two or three years only, his difficulties will be too many; whereas, if he is given power to grant a lease exceeding five years, the estate may benefit considerably, and therefore some easy and facilitating methods should be devised for him by which he can get a cheap and expeditious remedy. So there is no difficulty here and there is no need of bringing in any legal complexity or unnecessary substitution of any other provision where the present law is quite intelligible.

Dr. NARESH CHANDRA SEN GUPTA: I agree with Khan Bahadur Azizul Haque that there has been a certain misapprehension. The terms of this section only provide that sale, gift, mortgage or exchange by way of lease for five years shall not be valid without the previous sanction of the Commissioner. That is an additional disqualification imposed upon the *mutwalli;* so it is not giving him a privilege, nor has the *mutwalli* even got the power to make any alienation whatsoever under his *tawliat-nama* or under the Muhammadan law. He cannot take advantage of that and say that up to five years he has got this power. Besides, I do not think Mr. Quasem is right in saying that it is in any way interfering with the powers of the civil court. A suit under section 92 of the Civil Procedure Code can only be brought where there has been a breach of trust or if the direction of the court is necessary and then only with the sanction of the Advocate-General or with the sanction of the Collector or other officers authorised by Government with the previous sanction of the local Government. In such a suit the court can,

among other things, make an order with regard to transfers. That is a sort of suit which is not brought every day and no one can avail himself of the provisions of section 92 merely for the purpose of sanctioning a transfer. It is only when there has been a breach of trust under section 92 that this can be done, and though that is one of the orders which can be incidentally passed under section 92, yet that power of the court is not in any way affected by this clause. Sub-sections 2 and 3 provide in addition that transfer may be made with the sanction of the Commissioner in cases where there is an express power conferred by the *wakf* deed, that is to say, where the *mutwalli* has discretionary power under the Muhammadan law he cannot exceed that power. With regard to clause 4, here again, I think it makes it perfectly clear that it will apply to the *raiyati* lease which may be given by the *mutwalli* and when such lease is given, by the operation of the Bengal Tenancy Act, the *raiyat* may acquire a permanent right if he has possession of the land for 12 years; notwithstanding that, the *mutwalli* will have power to give *raiyati* lease, but supposing he purports to give lease *mokarari-mourashi*, that will not be validated by sub-clause (*4*), as it will be in excess of the power given by the Muhammadan law. In these circumstances the objections raised by Maulvi Abul Quasem are not substantial.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I am not a practising lawyer and have long forgotten all law. I simply want to say this that in course of a private conversation with the Hon'ble Mr. Nazimuddin I was told that a *mutwalli*——

Mr. NARENDRA KUMAR BASU: On a point of order, Sir. Can any member of the House detail a private conversation held outside this Council?

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Yesterday, Sir, you permitted the Hon'ble Minister to say something which I spoke in private to him. Under the present law a certain *mutwalli*, to my knowledge—I do not want to mention his name here—is in the practice of letting out lands which are in his *khas* possession to *raiyats* and thereby earning a lot of *nazar* and *salami*. Thus he is damaging the property which the future *mutwalli* will have to administer. If that is so, Sir, I think that by this clause my friend is giving the *mutwalli* an unlimited power to let out lands to agriculturists—call him by any name you like—for his own benefit. I think, Sir, that many members of this House have had similar experiences, and that they will be able to bear me out when I say that many *mutwallis* let out even *khas* lands of the original *wakif* to the detriment of the future enjoyment of the properties and thus causing loss to the future proprietors, or, say, the future *mutwalli*. With what experience of his the Hon'ble Minister can ask us to accept this provision, that the *mutwalli* should be given an unbridled and unfettered power of

letting out lands to agriculturists? The speeches which have been just now delivered have been delivered from a lawyer's point of view. But as an ordinary possessor of property I should like to ask the Hon'ble Minister whether he would be prepared to allow a *mutwalli* to have this unfettered power, specially as regards *khas* lands, to let them out to *raiyats* in this way. I hope he will now understand the force of my contention. As regards the clause itself, we find in sub-clause (*1*) that no transfer by a *mutwalli* of any immovable property of a *wakf* by way of sale, gift, mortgage, or exchange or by way of lease for a term exceeding five years shall be valid without the previous sanction of the Commissioner. Then in sub-clause (*4*) we find that lease to agriculturists should be excluded from the operation of clause 1 of the section. The meaning of sub-clause (*4*) is nothing but that "nothing in this section shall apply to any lease of land by a *mutwalli* for the purpose of cultivation by the lessee"; lease to a lessee for the purpose of cultivation—please mind the language. So if the lease to a party for the purpose of cultivation is excluded from the operation of this clause, I think that a great wrong will be done to property-holders who have some interest in the *wakf* properties as well as to those who may like to make any *wakf* in future under this Act. That being the case, I hope that the Hon'ble Minister will kindly reconsider his opinion.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Mr. President, Sir, Dr. Naresh Chandra Sen Gupta and Khan Bahadur Maulvi Azizul Haque have very carefully and clearly explained the actual legal position. No Act is cancelled unless it is specifically cancelled by this Act. The implication is that the previous law stands unless it is specifically cancelled by a later Act. Therefore, Sir, this provision will not in any way affect the existing law as regards this question. If Maulvi Abul Quasem had been a member of the Select Committee, I think this difficulty would not have arisen. The object for making this provision is that we contemplate that it is possible in certain cases for a person to put up certain facts before a District Judge and get his sanction for the transfer of *wakf* property. It is to safeguard against that that we have put in this amendment. The District Judge will not be in a position to know the real facts of the case. He has no time to make inquiries, and he will not be able to verify whether the statement of the *mutwalli* is correct or not. And I repeat that to safeguard against any such possibility we have put in an additional check for leases for a period of five years or more. The *mutwalli* must in above cases get the consent of the Commissioner also. This, I submit, provides a double check. Sir, I hope I have made my point clear and I think that we should accept the expert advice of Dr. Naresh Chandra Sen Gupta.

Maulvi ABUL QUASEM: Sir, may I ask a question of the Hon'ble Minister?

Mr. PRESIDENT: Yes.

Maulvi ABUL QUASEM: Sir, clause 69 makes it mandatory that notice for sale of any *wakf* property for the recovery of any revenues, cess, rates or taxes due to the Government or to the local authority should be given to the Commissioner by the Court, Collector or other person under whose orders the sale is notified. Now, Sir, supposing that without receiving the previous sanction of the Commissioner it is made compulsory under sub-clause 48 (*1*) that a man should go to a court of law and ask for permission to have lease for ten years and that the Commissioner is notified—whether he appears or not—will that be binding on the Commissioner?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Under this Act, Sir, it will not be valid because here it is specifically provided that any lease over five years shall require the previous sanction of the Commissioner.

Maulvi Abul Quasem's three motions were then put and lost.

The motion that clause 48 stand part of the Bill was then put and agreed to.

Clauses 49 and 50.

The motion that clauses 49 and 50 stand part of the Bill was put and agreed to.

Clause 51.

Mr. H. R. WILKINSON: Sir, I beg to move that in clause 51, in lines 5 and 6, after the words and figures "any accounts under section 44" the words, figures and letter "or any statements under section 47A" be inserted.

This is only a consequential amendment to include the statements of *wakf-al-al-aulad*.

The motion was put and agreed to.

The motion that clause 51, as amended, stand part of the Bill was put and agreed to.

Clause 52.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in sub-clause (*c*) of clause 52 (*1*) after the word "Board," wherever it occurs, the words "or the Commissioner" be inserted.

Also to move that in sub-clause (*d*) of clause 52 (*1*) after the word "Board", wherever it occurs, the words "or the Commissioner" be inserted.

Also to move that at the end of clause (*f*) of sub-clause (*1*) of clause 52, the words "or the Commissioner or a person authorised by the Board or the Commissioner" be added.

These amendments are self-explanatory and obvious.

The motions were put and agreed to.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in sub-clause (*1*) of clause 52, in lines 19 to 22, for the words "satisfies the Commissioner that there was reasonable cause for his failure, be liable to such fine not exceeding five hundred rupees as the Commissioner may impose," the words "satisfies the Court that there was reasonable cause for his failure, be punishable with fine which may extend to five hundred rupees" be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: May I ask the Hon'ble Member a question?

Mr. PRESIDENT: Yes, after I have asked Mr. Sen Gupta to move his amendment.

Dr. NARESH CHANDRA SEN GUPTA: My amendments 203 and 206 are to the same effect, and therefore I do not move them.

Khan Bahadur Maulvi AZIZUL HAQUE: This is an appropriate time to inquire whether this is a good thing to find a place in the statute book. Government will not take any financial responsibility for anything under this Act; yet I find that there are some provisions in this Bill under which Government will be able to take all the fines realised. May I know what it exactly means? All the fines realised under the Wakf Act, will they go to the Government coffers, or will they come to the *wakf* funds? I find that these fines go to the Magistrate under this specific provision, and there is no possibility of the money coming to the *wakf* fund. If Government take no responsibility, and provide a penalty under a special provision of this Act, then these fines should come to the *wakf* funds.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: A question has been asked, and I ought to make it quite clear, that these fines will go to the Government coffers, because it is the general principle that in a case like this the fines should not go to the fund for which the fines are made. That is the accepted principle.

Khan Bahadur Maulvi AZIZUL HAQUE: What about the district board and municipal fines?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: These are the exceptions.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: This is an important deviation which is being proposed from the main provisions of this Bill. We have been so long thinking that we will have a parallel Government with powers to punish ourselves in cases of necessity, and we will impose certain fines, and those fines will go for the good of the community. But now I see an important deviation is being proposed, and that power will no longer be allowed to the Commissioner, but will go to the court, and the fruit will now go to the court, or rather to the owner of the court, that is Government. I strongly object to this. We are dealing with poor men's funds and if the Government is not prepared to take any financial responsibility for conducting or doing anything in furtherance of the Act, why should Government ever think of making a profit out of it? Is it right and is it proper that the Government should care to handle poor people's funds, poor people's money in this way? So if the Hon'ble Minister says there is no way out of it, I may tell him that if he makes a special provision in this Bill, that whatever fines would be realised would go to these funds, instead of saying that it will go to the Government exchequer; he can do it. It has been done in the case of the Cattle Trespass Act. As a person having something to do with municipal affairs, I always found this small money coming from the Collector and credited to the municipal fund as an income from the Cattle Trespass Act. So if you can give that money to the municipality, I think for district boards there is also a similar provision, they are also getting some money from the Collector——

Dr. NARESH CHANDRA SEN GUPTA: On a point of order, Sir, this question does not arise here. That is under another amendment.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I will speak on that too.

Mr. PRESIDENT: Order, order. The Nawab Sahib was referring to the reply that was given by the Hon'ble Minister to a question that was put on the floor of the House.

Dr. NARESH CHANDRA SEN GUPTA: If the Bill stands as it is, this question will not arise.

Mr. PRESIDENT: Having regard to the fact that a question was put and answered, I allowed the Nawab Sahib to take up the point.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: When the other amendment comes up, I shall speak on that.

Mr. PRESIDENT: My ruling was entirely in your favour. Do not hesitate to go on.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: If I did not hear you, do not blame my intelligence, but blame my hearing.

Mr. PRESIDENT: I have never questioned your intelligence, Nawab Sahib. I have definite proof of it. (Laughter.)

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I will try to convince my friend the Hon'ble Minister and the power behind him, the real man in power, the Secretary. If they are so pleased, they may give this small money to the *wakf* fund, and that will do real good to my community. I would appeal to both and my friends in the Treasury Bench to consider this case, and I hope they will all unite in making a provision before we finish the consideration of the Bill, a provision by which all the proceeds of the fines will be credited to the poor man's funds. I again make this appeal because it is really a poor man's fund.

Mr. PRESIDENT: No more of that. Now come to your amendment, Nawab Sahib.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: As regards the amendment, I do not know why the power that was being granted to the Commissioner is being diverted. Is Government afraid of a parallel Government? There would not have been any difficulty in the administration of this Act. Rather it would have enhanced the reputation and the position of the Commissioner, and perhaps made the working of the Act more easy. Now why are you thinking of depriving the Commissioner of this power which the Select Committee and the best brains of the House were prepared to give? Now, of course, my friend is in a specially fortunate position. We are all disintegrated, the whole House; we have absolutely no solid opposition. If he says "No," however argumentative my speech may be, however good it may be for the people of the country, he can negative it at once. That being the position, I am not prepared to ask any favour of this House. I appeal to the real man, the man in power, Mr. Wilkinson, to rescue us anyhow out of this difficulty, and leave this money to the poor Mussalman fund. I hope if he would communicate it to his master, and if he knows that this is the sincere prayer of the poor Mussalmans——

Mr. PRESIDENT: I think you ought to think of the Hon'ble Minister. I do not understand who you are alluding to as "the man behind the throne" and the "real master" and so on. Please do not forget that the Hon'ble Minister represents Government here in respect of the Bill now before us.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: All right, I withdraw this, through you.

Dr. NARESH CHANDRA SEN GUPTA: On a point of order, Sir, cannot he make an appeal to the members of the Government benches?

Mr. PRESIDENT: There can be no objection to that if he adopts the correct procedure.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I bow down to your ruling, and now I appeal to the Members of Government as well as to the whole House, that they should combine to accede to my prayer and give this small money to the poor man's fund, instead of enriching the already well-equipped funds of Government.

Mr. A. F. RAHMAN: May I put forward this point of view, that it appears to me that the amendment before the House is really in the nature of a safeguard for *wakf* estates, because I feel that if the Commissioner were allowed to impose a fine and credit it to the *wakf* fund, there might be a temptation on the part of the Commissioner to impose fines for petty offences to augment the income of the *wakf* fund which the Commissioner will administer. Perhaps it would be better if all such cases were referred to a court. That would be a better safeguard.

Dr. NARESH CHANDRA SEN GUPTA: I find that the motion is confined to sub-clause (*1*) of clause 52, but there is another sub-clause, namely, sub-clause (*2*) of clause 52 which also deals with fine. This sub-clause says that if a *mutwalli* furnishes any statement, return or information referred to in clause (*b*) or clause (*c*) of sub-section (*1*), which he knows or has reason to believe to be false, misleading or untrue in any material particular, he shall be liable to such fine not exceeding Rs. 500 as the Commissioner may impose. I think the same reasoning ought to apply to this clause also. If sub-clause (*1*) be amended in the way suggested, sub-clause (*2*) should also be amended. With reference to that, I have tabled an amendment (No. 206) and if you permit me, Sir, I will move that now.

Mr. PRESIDENT: Your amendment is covered by the amendment of the Hon'ble Minister.

The Hon'ble Mr. Khwaja Nasimuddin's motion was then put and agreed to.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in sub-clause (*2*) of clause 52, in lines 4 to 6, for the words "shall be

liable to such fine not exceeding five hundred rupees as the Commissioner may impose," the words "shall be punishable with fine which may extend to five hundred rupees" be substituted.

The motion was put and agreed to.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that clause 52(*3*) be omitted.

This is consequential.

The motion was put and agreed to.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that sub-clause (*4*) of clause 52 be omitted.

It is consequential.

The motion was put and agreed to.

The motion that clause 52 as amended stand part of the Bill was put and agreed to.

Clause 53.

Mr. A. RAHEEM: I beg to move that clause 53 be omitted.

There are various reasons in support of my amendment, but I place only one which is the most important and that is that clause 53 is entirely against the *Shariat*. According to Muslim law, no *mutwalli* can be removed on any account except upon clear proof of misappropriation or breach of trust. Sir, control over the Muslim *wakfs* through legislation is a matter of unusual importance. If any loophole or unsound or unsafe principle is left in the Bill, it will kill the purpose for which it is introduced.

I find from the record that the Bill was circulated to all the district boards, District Judges, Muslim *Anjumans*, various Bar Associations and many other public bodies for eliciting their opinion, but not to any religious body such as *Darul-Ulum*, *Jamiatul Ulama*, etc. It also appears from the record that nearly 125 opinions have come from different persons and bodies, but none from religious heads or religious bodies. The question of Muslim *wakf* is purely a religious question of vital importance, and the most important, useful and correct opinion or advice should have been from *Ulamas*, which were never invited, and which resulted in existence of such defects in the Bill as clause 53 and those which are now being removed by the Hon'ble Minister through his various amendments.

Sir, it is too late for us to seek advice from *Ulamas*; let us now be content with the law books.

Sir, in the Muhammadan law by Ameer Ali, on page 463 of Volume I, it is clearly stated that the *Kazi* can only remove the *mutwalli* upon proof of misfeasance or breach of trust. After knowing that this clause is against the *Shariat*, we the Muslims should not support clause 53 which provides removal of a *mutwalli* merely on the ground that he has been fined more than once. I, therefore, trust that the mover of the Bill, who is a Muslim himself, will have no objection in accepting my amendment.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I support the amendment.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I do not know how I have offended the Nawab Sahib as I find that anything that is supported by Government the Nawab Sahib takes pleasure in opposing. So far as this clause is concerned, I think it is a very salutary provision. After all, Mr. Raheem himself has quoted Justice Ameer Ali and said that the *mutwalli* can be removed either for misfeasance or breach of trust and the *mutwalli* will not be removed unless he is found guilty of those offences. It will defeat the whole object of the Bill, if we do not have some kind of salutary provision like this in the Bill, because it is possible for the *mutwallis* to keep on refusing to perform certain duties entrusted to them under this Bill and be hauled up before the Magistrate and fined. It may be said that the maximum fine is Rs. 500 which very few *mutwallis* can pay. You will find that the usual fine is Rs. 5 or Rs. 10 in food adulteration cases and there are many cases where the same men are hauled up several times, but they do not mind paying the fine because their profits are much more from adulteration. Similarly, a *mutwalli* may be violating his duties and can be fined again and again. If it will satisfy the members of this House I move a short-notice amendment changing the word "shall" to "may." The clause will read thus:—

"Notwithstanding anything contained in any other law a *mutwalli* may be liable to removal, etc."

Mr. A. RAHEEM: Sir, may I put one question to the Hon'ble Minister? He said that the *mutwalli* cannot be fined unless there is a misappropriation or breach of trust.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I said for misfeasance or breach of trust——

Mr. PRESIDENT: I am afraid Mr. Raheem, instead of putting a question, is arguing. I cannot allow him to do that.

Dr. NARESH CHANDRA SEN GUPTA: Sir, may I point out that the amendment suggested by the Hon'ble Minister will not serve the purpose. The amendment ought to be in this form:—

"A *mutwalli* may be removed by the court on a suit."

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I am quite prepared to accept that he may be removed by the court on a suit.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, may I suggest that the consideration of this question be postponed for the present? I think it would be better if we take it up after prayer.

Mr. PRESIDENT: I leave it to the Hon'ble Minister. If he wants a postponement, I have no objection to postpone it.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I think it would be better to do so.

(The Council was then adjourned for 15 minutes for prayer.)

(After adjournment.)

Khan Bahadur Maulvi AZIZUL HAQUE: I think, Sir, if the word "shall" is substituted by the word "may" it will quite serve the purpose, because it is only the civil court that is concerned and action may be left to the civil court, so that the amendment will read like this:—

"Notwithstanding anything contained in any other law a *mutwalli* may be liable to removal by a suit under sub-section (*1*) of section 72 on the ground that he has been fined more than once under section 52."

Mr. A. RAHEEM: I beg leave to withdraw my amendment.

The motion was then, by leave of the House, withdrawn.

The motion of Khan Bahadur Maulvi Azizul Haque that the word "shall" in the second line of clause 53 be replaced by the word "may" was then put and agreed to.

The motion that clause 53 as amended stand part of the Bill was put and agreed to.

Clause 54.

Maulvi TAMIZUDDIN KHAN: I beg to move that clause 54 be omitted.

I move this amendment, Sir, simply as a protest against the regrettable decision of Government not to take any financial responsibility in the matter of this Bill.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I am very sorry I have to oppose it.

The motion was put and lost.

Mr. H. R. WILKINSON: I beg to move that for sub-clause (*1*) of clause 54, the following sub-clause be substituted, namely:—

"(*1*) The *mutwalli* of every *wakf* shall pay annually to the Board such contribution not exceeding the rate of five *per centum* of the net available income of the *wakf* as the Board may, with the sanction of the Local Government, from time to time, determine:

Provided that in the case of a *wakf-al-al-aulad* the contribution shall be at such rate (not exceeding one-half of the rate payable by other *wakfs*) of the net available income of the *wakf* as the Board may, with the sanction of the Local Government, from time to time, determine."

There are two matters here which perhaps require explanation. The first is the increase of the rate payable by the *wakfs* to the *wakf* fund from 2½ *per cent.* as proposed by the Select Committee, to 5 *per cent.* as proposed in this amendment. It must be noticed in the first place that whereas the Select Committee proposed that it should be based on the gross income, here we have suggested that it should be based on the net available income which will reduce the figure very much. The whole idea of increasing the rate payable is in furtherance of the principle that the scheme must be self-supporting. We have therefore proposed a figure which we think will be sufficiently large to prevent any possibility of financial assistance being required; 5 *per cent.* is also the figure proposed by the Suhrawardy Committee, though in that case, again, it was based on the gross income. The second point is the differentiation in the rate payable by *wakfs-al-al-aulad* and it has been so fixed that in any case it will not be more than one-half of that payable by any other *wakfs*, but it can be less also.

Maulvi TAMIZUDDIN KHAN: I beg to move that for clause 54(*1*) the following be substituted, namely:—

"(*1*) The *mutwalli* of every *wakf* not being a *wakf-al-al-aulad* shall pay annually to the Board such contribution not exceeding two and a half *per centum* of the gross annual income of the *wakf* as the Board may, with the sanction of the Local Government, from time to time determine:

Provided that the total amount annually payable by such *mutwalli* shall in no case exceed the sum of five hundred rupees.

(*2*) The *mutwalli* of every *wakf-al-al-aulad* shall annually pay to the Board such contribution not exceeding one *per centum* of the gross

annual income of the *wakf* as the Board may, with the sanction of the Local Government, from time to time determine:

Provided that the total amount annually payable by such *mutwalli* shall in no case exceed the sum of fifty rupees."

In doing so, I oppose the amendment proposed by Mr. Wilkinson. Mr. Wilkinson's amendment purports to raise the rate from 2½ *per cent.* as settled by the Select Committee to 5 *per cent.* In the Select Committee it was decided that the levy should be 2½ *per cent.* on the gross income; here it is 5 *per cent.* not on the gross but on the net income, but still there is a substantial increase in the amount of the levy. What is objectionable with regard to this increase is that if there is an increase in the levy there will be a tendency on the part of the Board to be extravagant. If there is more money going into the hands of the Board it is natural that the Board will try to spend money lavishly by appointing servants on high salaries and undertaking other activities of a superfluous nature. Therefore, I think that we should not provide more money than is absolutely necessary for the Board. My estimate is that 2½ *per cent.* of the net profit would quite suffice. But still apart from the question of percentage of net profits or gross profits, whatever it may be, I think a limit should be put on the total amount leviable upon a particular *wakf*. The amendment of Mr. Wilkinson says that the levy may go up to 5 *per cent.* of the net income. Supposing an estate has an income of Rs. 50,000, in that case the maximum amount leviable upon that estate would be Rs. 2,500 and in the case of a *wakf-al-al-aulad* the amount may go up to Rs. 1,250; that is a very high sum which I think should never be allowed to be levied. My proposal is that there should be some maximum limit of the levy: that is to say, in the case of a general *wakf* the levy should not be more than Rs. 500, in any particular instance, and in the case of a *wakf-al-al-aulad* the maximum should not be more than Rs. 50. In the case of a *wakf-al-al-aulad* if no such maximum limit is fixed it will cause great hardship. According to the definition we have adopted a *wakf-al-al-aulad* may set apart 25 *per cent.* of its income for purposes of charity or religious purposes, but it may not do so at all. Even 100 *per cent.* may be left to the heirs of the *wakif*. Will it not be a great hardship if these *wakifs* are bound to pay such a heavy sum as levy as proposed in the official amendment? Therefore, if no limit is put on the sum leviable upon a particular estate, it will in many cases create great hardship and discontent. I think, therefore, that some limitation should be put. If the limitation that I want to put does not seem to be reasonable, the Hon'ble Minister or the member in charge may suggest some other figure. But if there is no limit, I think there will be just this danger that the Board may spend money extravagantly and some *wakfs* will be very hard hit.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, I oppose this motion, namely, the motion of Maulvi Tamizuddin Khan. My friend the Hon'ble Minister rather accused me wrongly when he said that I was against all Government proposals. I oppose this motion on the ground that this 5 *per cent.* or 2½ *per cent.* may be considered as insurance premia. Here if the Government would honestly work out the scheme, and Government have mentioned that they will protect these properties by paying the land revenue, and Government dues out of this fund, the bigger the fund the better will it be for the country as well as for the properties. All the properties will be insured as it were. For this reason I think if this contribution was even 10 *per cent.*, I will welcome it. In this matter, Sir, I am at one with the Hon'ble Mr. Nazimuddin.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I like to explain very briefly to my friend Maulvi Tamizuddin Khan that his amendment is really not an improvement upon that of Mr. Wilkinson's. If you will look to the original section you will see that the Select Committee based the levy at 2½ *per cent.* and 1 *per cent.*, respectively, upon the gross annual income. Now, Sir, the proposal is that the levy should be 5 *per cent.* and 2½ *per cent.*, respectively, of the net income, which will practically come to a sum which will not be greater in any way than what was anticipated by the Select Committee. The real importance of this point is that we are all at the present moment in the dark as to what the income from the levy will be and what the actual cost that Government will have to incur will be in managing the *wakf* properties. Therefore at this stage it is very difficult to say that the levy will be too much or too little at a particular rate. In this Bill as amended there is a provision for a survey and until that survey is complete and we are in a position to know what the total number of *wakf* estates and properties are in this province and what the net income of the properties will be, it will be very difficult to say at the present moment whether it will be sufficient to have 2½ *per cent.* or 1 *per cent.* or any other percentage, and whether it will be safe to have 2½ *per cent.* or 1 *per cent.* So under the circumstances of the case I think it will be better to leave the percentage as it is and not to quarrel about it at present. With these few words I would appeal to Maulvi Tamizuddin Khan not to press his amendment.

Maulvi ABDUL GHANI CHOWDHURY: Sir, I wholeheartedly support the amendment moved by Mr. Wilkinson and I, at the same time, oppose the one moved by my friend Maulvi Tamizuddin Khan because I feel that there is no need for it.

Maulvi Tamizuddin Khan's motion was then put and lost.

Mr. Wilkinson's motion was then put and agreed to.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, may I have your permission to amend the motion standing in my name by the addition of a proviso?

Mr. PRESIDENT: Yes, I have seen it. You have my permission to do so; but have you circulated the amendment to the members of this House?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: No, Sir. I am sorry I have not had time to do so.

Mr. PRESIDENT: In that case, I am afraid, you shall have to fully explain the implications of the proviso you are going to add.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, I beg to move that after sub-clause (*2*) of clause 54, the following sub-clause be inserted, namely:—

"(*2a*) Subject to any provisions in the *wakf* deed the *mutwalli* may realise the contribution payable by him under sub-section (*1*) from the various persons entitled to receive any pecuniary or other material benefits from the *wakf*, but the sum realizable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of benefits receivable by such person bears to the entire net available income of the *wakf*:

Provided that, if there is any income of the *wakf* available in excess of the amount payable as dues under this Act, other than as the contribution, and in excess of the amount payable under the *wakf* deed, the contribution shall be paid out of such income."

Sir, the idea is that if after paying for charities and other things provided for in the *wakf* deed there is a surplus, then the contribution will come from that surplus and not from the *wakf* fund.

The motion was put and agreed to.

Maulvi ABUL QUASEM: Sir, with your permission I should like to make a slight verbal addition to my amendment, and that is that I want to put in the word "other" before the word "statutory". My amendment will then read as follows:—

"That in clause 54(*3*), line 3, after the word 'Government' the words 'and of any other statutory first charge on the *wakf* property or the income thereof' be inserted."

Mr. PRESIDENT: You have my permission to move your amendment in the way you suggested.

Maulvi ABUL QUASEM: Sir, some people might think that the addition is not necessary. But I have inserted this word only to remind the House that under clause 35 we have provided that where a *mutwalli* refuses to pay or does not pay any revenue, cess, rates, and taxes due to the Government or to any local authority, the Commissioner may discharge the dues from the *wakf* fund and then recover the same from the *wakf* property. We have recognised that dues of Government and local authorities should be first paid off. Some of these dues are just charges already under different statutes. For example, municipal rates are a first charge under the Bengal Municipal Act and the Calcutta Municipal Act. Under the Bengal Tenancy Act, rent is a first charge. When the Bill insists that all public dues should be paid off first, their priority as statutory first charges should be clearly recognised. This is why I have moved this amendment.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, Government have no objection to the addition proposed by Maulvi Abul Quasem.

The motion was put and greed to.

Clauses 54 and 55.

The motion that clause 54, as amended, and clause 55 stand part of the Bill was then put and agreed to.

Clause 56.

Mr. H. R. WILKINSON: Sir, I beg to move that in clause 56 (*1*), in lines 3 and 4, the words and figures "including fines imposed under section 52" be omitted.

Sir, the discussion has already been anticipated in connection with an earlier clause and therefore I need say very little at the present moment. The point I want to submit is that it is wrong in principle that the person interested should get the fines which will accrue out of prosecutions. I submit, Sir, that it might lead to a greater number of prosecutions than might be justifiable, or rather it might be alleged that it did so.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, we are very glad to say that the Hon'ble Mr. Woodhead has come in just now, probably to listen to the discussions on the only provision of the Bill which really affects him and his department. Sir, I feel that the Hon'ble Member will consider this question from the standpoint of financial canons, financial purism and financial responsibility. Sir, I think that if this amendment be accepted, it would violate one of the primary financial canons that Government should accept no responsibility in a Bill of

this nature, and I think that so far as we are concerned we have accepted this principle. I agree that Government should not accept any such responsibility in the case of a particular community. But I do not see any justification why Government should take the money when a special provision is being made in the Act for creating an offence and for which certain penalties are imposed under this Act. Sir, it is not a penal offence; it is an offence of a *quasi*-civil nature when certain duties are not being performed in a certain manner. Mr. Wilkinson has raised the point that it is wrong in principle that the amount of the fines realised should go to the benefit of the *wakifs*. It must be within the knowledge of the Hon'ble Member that in the case of the district boards of Bengal, the Calcutta Corporation, and the municipalities of the province the fines under certain preventive Acts are credited to the various and respective authorities. Let us take the case of the Food Adulteration Act, and what do we find? We find that the fines imposed under that Act all go to the local body concerned. It cannot be said, that frivolous prosecutions are therefore the order of the day. What I want to point out is that if the fines are credited to the *wakfs* fund, there would be no likelihood of frivolous prosecutions. Courts will certainly prevent this. There is also the Board to prevent such abuses. Of course, the Board, I admit, may misuse its powers, but it is too remote and improbable. I hope, Sir, that in view of the reasons which I have adduced the Hon'ble Mr. Woodhead will be a little soft-hearted in regard to *wakf* matters.

Sir, I feel that this is a matter which should engage the earnest consideration of the Hon'ble Member. It may be argued that if my request is accepted, we should be violating elementary principles of financial purism. But, might I point out that we are violating principles every day and in every sphere of life, and that we are inconsistent in all our actions. It is not at all clear why a special fine should not go to a special fund. However strong the objections might be, we feel that so far as this fine under this Act is concerned, it should go to the *wakfs* fund. I might add further that the quantum of fine will in no way be determined by the Commissioner of Wakfs. I think, Sir, that these fines should go to the *wakfs* fund, and it is only reasonable to say that my suggestion is a very modest one.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, I rise to add a few words on this point. I do not think that Mr. Wilkinson is right in saying that it infringes a principle. In this case the Commissioner of Wakfs is not a party in the legal sense of the term. So if the money goes to the *wakf* fund, I do not think that it will violate any financial canon. It is not a case exactly on a par with the district boards and municipalities, because in such cases they prosecute people and realise the fines. In this case the Commissioner of Wakfs is not strictly

speaking a "party". Therefore, I do not think that it is quite on a par with those cases in which it is held that it is wrong in principle. I certainly think that since Government is not taking any financial responsibility in the matter, they have no right to take away any fines which are realised in connection with the Wakf Bill. Therefore, I oppose the amendment.

Maulvi ABDUL GHANI CHOWDHURY: I also oppose the amendment.

The Hon'ble Mr. J. A. WOODHEAD: Sir, my appearance in the House at this precise moment was not intentional; I came in quite accidentally. Sir, in spite of what Khan Bahadur Maulvi Azizul Haque and Khan Bahadur Maulvi M. A. Momin have said in regard to the matter now under consideration an important question of principle is involved. The principle is this, the body or person which has the power to lodge a complaint against a person in regard to an offence should not be financially interested in the fine imposed; in other words, such fines should not form a part of the income of such body or person. It is a principle to which Government attaches considerable importance and that is why Government have put forward this amendment. It is wrong in principle that the fines imposed upon the complaint of the Commissioner of Wakfs should be credited to the *wakf* fund.

Maulvi TAMIZUDDIN KHAN: Sir, I beg to oppose this amendment. The arguments that can be advanced in opposition to this amendment have already been advanced by Khan Bahadur Maulvi Azizul Haque and Khan Bahadur Maulvi M. A. Momin and I have very little to add to them. I would only say, Sir, that so far as the fines under these clauses are concerned those will be more in the nature of civil court fines. I may compare these to the damages payable under the Bengal Tenancy Act. In the case of suits under the Bengal Tenancy Act, these are instituted by the landlord, and it is the landlord who is given damages in cases in which he is entitled to the same. Therefore, I think no principle will be violated if the fines that will be realisable under this clause be given to the *wakf* fund, and even if there was some principle involved, a little violation of that principle would not be such a serious thing as it is apprehended to be by the Government. And especially they should not object to this money going to the *wakf* fund as the Government have refused to take any financial responsibility. I can understand the position of the Government in refusing to take any financial responsibility under present conditions, but I do not understand the reason why the Government should think of being aggrandising in this manner.

Mr. Wilkinson's motion being out, a division was taken with the following result:—

AYES.

Ali, Mr. Altaf.
Barman, Babu Premhari.
Bose, Mr. S. M.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Chaudhuri, Dr. Jogendra Chandra.
Dutt, Mr. G. S.
Edgley, Mr. R. G. A.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dilduar.
Gilchrist, Mr. R. R.
Gladding, Mr. D.
Hogg, Mr. R. P.
Martin, Mr. O. M.
Mitter, Mr. S. C.
Mittra, Babu Sarat Chandra.
Mullick, Mr. Mahendra Behary.
Nag, Reverend S. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Satiseswar Singh.
Roy, Mr. S. N.
Ray Chaudhuri, Babu Nam Chandra.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rohati Mohan.
Sen, Mr. R. R.
Townend, Mr. H. P. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

NOES.

Ali, Maulvi Hassan.
Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Chaudhuri, Khan Bahadur Maulvi Alimurraman.
Chaudhuri, Babu Kishori Mohan.
Chowdhury, Maulvi Abdul Ghani.
Chowdhury, Haji Badi Ahmed.
Ezazji, Maulvi Nur Rahman Khan.
Ghose, Dr. Amulya Ratan.
Haque, Khan Bahadur Maulvi Azizul.
Hoque, Kazi Emdadul.
Hossain, Nawab Musharruf, Khan Bahadur.
Hossain, Maulvi Muhammad.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Mr. Razaur Rahman.
Khan, Maulvi Tamizuddin.
Maiti, Mr. H.
Momin, Khan Bahadur Muhammad Abdul.
Mukherji, Rai Bahadur Satish Chandra.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Qasem, Maulvi Abul.
Raheem, Mr. A.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-.
Rahman, Maulvi Azizur.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Rout, Babu Nozul.
Saadatullah, Maulvi Muhammad.
Samad, Maulvi Abdus.
Shah, Maulvi Abdul Hamid.
Sulaiman, Maulvi Muhammad.

Ayes being 34 and Noes 32, the motion was carried.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that for sub-clause (*3*) of clause 56, the following be substituted, namely:—

"(*3*) The *wakfs* fund shall, subject to the provisions of sub-section (*2*), be under the control of the Board."

The motion was put and agreed to.

The motion that clause 56 as amended stand part of the Bill was put and agreed to.

New Clause 56A.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that after clause 56 the following be inserted, namely:— Application of *wakfs* fund.

56A. (*1*) The *wakfs* fund shall be applied to—

(*a*) payment to the Local Government of cost of survey of *wakf* properties under section 1A;

(*b*) repayment of any loan incurred under section 55 and payment of the interest thereon;

(*c*) payment of the cost of audit of the *wakfs* fund;

(*d*) payment of the salary and allowances of the Commissioner and of any person appointed under section 18 to act as Commissioner;

(*e*) payment of travelling allowances to the Commissioner, members, officers and servants of the Board under section 23A;

(*f*) payment of the cost of the establishment employed by the Board; and

(*g*) payment of all expenses incurred by the Commissioner and the Board in the performance of the duties imposed, and the exercise of the powers conferred, by this Act.

(*2*) If any balance remains after meeting the expenditure referred to in sub-section (*1*), the Board may use any portion of such balance for the preservation and protection of *wakf* property."

This is only to provide for the levy of *wakf-al-al-aulad*. This subject has been discussed at great length and I do not think any further speech is necessary.

The motion was put and agreed to.

The motion that clause 56A stand part of the Bill was put and agreed to.

Clause 57.

The motion that clause 57 stand part of the Bill was put and agreed to.

Clause 58.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that after sub-clause (*1*) of clause 58, the following words and figures be added, namely:—

"(*1a*) The auditor may, by written notice, require the production before him of any document, or require the attendance before him of

any person responsible for the preparation of the account, to enable the auditor to obtain such information as he may consider necessary for the proper conduct of his audit."

The motion was put and agreed to.

Clause 58.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that to sub-clause (*3*) of clause 58, the following words be added, namely:—

"The report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case verify the amount of such expenditure or loss as due from such person."

The motion was put and agreed to.

The motion that clause 58 as amended stand part of the Bill was put and agreed to.

Clause 59.

The motion that clause 59 stand part of the Bill was put and agreed to.

Clause 60.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in sub-clause (*1*) of clause 60, in line 2, after the words and figures "under section 58," the following words and figures be inserted, namely:—

"unless such certificate is modified or cancelled by the Local Government by an order made under section 59 and every sum due on a modified certificate."

The motion was put and agreed to.

The motion that clause 60 as amended stand part of the Bill was put and agreed to.

Mr. H. R. WILKINSON: My suggestion is that 264 be taken first. If that is carried, I think the members will be willing to withdraw all the intermediate amendments. It will cover them all.

Mr. PRESIDENT: I take it that the House agree to what Mr. Wilkinson says. Yes, you may move item No. 264 at this stage

New clause 65A.

Mr. H. R. WILKINSON: I beg to move that after clause 65 the following clause shall be inserted, namely:—

"65A. Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Local Government may make rules for the procedure to be followed in all suits or proceedings relating to any *wakf* or to any *wakf* property and not involving any claim by or against a stranger to the *wakf*."

Proce for tri certai *wakf*

One of the objects of this Bill is to expedite and prevent delay in litigation. The Select Committee proposed a special procedure with this object, but it was felt that this was perhaps a roundabout way of securing the object; this amendment proposes to give the Local Government rule-making powers to lay down the procedure.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, some further explanation is necessary to convince us that the Select Committee procedure is not in order. We do not know whether the discretion of Government will be better than that of such a large number of people as sat on the Select Committee. Is there any special item in the procedure which the Government take exception to and for which the Government want to take away the whole power themselves? I want an explanation from the Hon'ble Minister just to have an idea of the object Government have in view.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: The reason why this has been suggested is this, that the Select Committee drafted these provisions for "*Wakf* Tribunal" with a view to expedite the disposal of cases in which the *wakf* estates are involved, but we find that the general opinion amongst the Mussalmans was not in favour of this and they thought that there was no special merit in the proposal put forward by the Select Committee, and we also were advised by our legal experts that the object with which these clauses had been provided would not be served. Therefore, we thought it far better to omit them and try to have rule-making powers, if possible, to simplify the procedure so that we could give some relief to the litigants of *wakf* estates. With this object in view this amendment has been proposed, and I hope we will be able to give some substantial relief. Even if we find that under the existing powers we cannot do so, it is possible to request the Government of India to legislate which may help us to give relief on the lines on which this amendment is based. If this amendment is passed, we will have a good case to go up to the Government of India for an amending Bill.

Khan Bahadur Maulvi AZIZUL HAQUE: We have now come to a stage in which it seems to me that the whole Act could have been

confined into two sections. One section is that a Commissioner will be appointed on Rs. 3,000 and another section by which the Local Government makes itself self-empowered. It seems to me that the Government have put us in such a difficult position that it is difficult to decide whether we should oppose or support it. We find that several tribunals have been suggested in one stage or another. Sir Zahid Suhrawardy Committee suggested one tribunal, but it was not accepted. The Select Committee suggested one and it was not accepted. Government say "leave it to us to decide the question between ourselves and the Government of India, who, although they reside thousands of miles away, will be able to settle the matter." I believe that the idea of simplifying the procedure is far off from their minds. So far as the other factors are concerned, the Hon'ble Minister was strong in his viewpoint that time had come when we must do something to simplify matters. Yet when the Select Committee devised a method, no argument has been put forward as to why that has been found unsuitable. I could have understood if we had the opinions of judicial officers that that machinery is unsuitable. I might tell you that that machinery was devised on the model of the salvage and marine cases, and it was thought that if a special tribunal was created by judicial officers, things would certainly be expedited. I feel that apart from other factors it would have been well if Government would have come forward with a scheme of their own as to how best the procedure could be simplified. In its absence all that is suggested is that the Local Government will make rules for the procedure to be followed in all suits or proceedings relating to any *wakf* or to any *wakf* property. I do not see any reason for this. I think, therefore, Government should come forward with a scheme of their own.

Khan Bahadur MUHAMMAD ABDUL MOMIN: At the outset I should like to tell the House that I was never enamoured of the short-cut procedure which the Select Committee evolved about the special tribunal and the assessors. In the Select Committee these proposals were passed, but at that time I thought and I think even now that the procedure suggested in the Bill, which it is now proposed to omit, really does not in any way simplify the procedure to such an extent that it will justify us in deviating from the ordinary procedure of law. All that we need in *wakf* cases is that when the case is only between persons interested and does not affect the stranger, the procedure should be as simple as possible. This can be provided by rules if the rules do not clash with the statutory laws. What was suggested in the Select Committee was that we should have a special tribunal and two assessors and with the help of those two assessors the trial should take place. I do not see how it can be expected that such a procedure would be simpler or would be much less expensive than it is at present or if the cases were tried in the usual way. I

think that so long as we cannot evolve a scheme which will materially reduce the time and expenses of these litigations, it will not be proper to interfere with the ordinary law of the land. Therefore, personally I am not opposed to the deletion of the provision of special tribunal, and I would not object to accept the amendment before us.

Mr. Wilkinson's motion was then put and agreed to.

Clauses 61 to 65.

Mr. H. R. WILKINSON: I beg to move that the sub-heading "*Wakf* Tribunal" before clause 61 be omitted.

I also move that clauses 61 to 65 be omitted.

The motions were then put and agreed to.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order, Sir, I find that clauses 61 to 65 have been deleted and instead of that we have got clause 65A. But in clause 66 we find there is a reference to clause 61——

Mr. PRESIDENT: Clause 66 is not a part of the Bill. You will recollect that when the member in charge of the Bill moved that the Bill be taken into consideration he deliberately excluded clause 66 as the necessary sanction had not been obtained to it. So that question does not arise, and we can at once take up clause 67.

Clause 67.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that for clause 67 the following clause be substituted, namely:—

"67. Where a decree for rent or any other relief claimed under or on behalf of a *wakf* is passed or such decree is executed by any court the decretal amount, if any, shall, if the *wakf* has not been enrolled under this Act or has not been exempted under section 3 from enrolment be paid into the court passing or executing the decree, as the case may be, and shall be kept in deposit by the court until the *wakf* has been enrolled under this Act or has been exempted from enrolment under section 3."

Sir, the modification suggested is simply this, that the decretal amount will be deposited in court. The whole object of this clause is to enforce enrolment and it is a sort of penalty that unless they get themselves enrolled, they do not get their money. It is very necessary, because the whole scheme of the Bill is based on enrolment; it is the very basis of our future activities.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: May I ask the Hon'ble Minister whether if the *wakf* has not been enrolled, the *mutwalli* will not be able to realise the rent?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: It will be difficult for him to realise it out of court.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 67, lines 3 to 5, for the words "unless the *wakf* has been enrolled under this Act or has been exempted under section 3 from enrolment," the words "unless an application for enrolment of the *wakf* has been made under section 40 of this Act" be substituted.

I would only point out that so far as the amendment moved by the Hon'ble Minister is concerned, there seems to be one difficulty. He has said that the decretal amount shall be deposited in court, if the *wakf* has not been enrolled under this Act. It may be that the *mutwalli* has actually applied for enrolment. In the beginning there will be a rush of applications for enrolment and naturally a good deal of time will elapse before all the applications are examined and the *wakfs* are properly enrolled. During that time pending the enrolment, there is no reason why the decretal amount should be kept in deposit in court. Therefore, if my amendment is accepted, I think the difficulty will be obviated, because, as soon as an application has been made, the *mutwalli* has done his part of the obligation and it remains for the Board to do theirs. So in such cases the money should not be kept in abeyance.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: It is difficult for the court to know whether the *mutwalli* has applied or not; that is the first difficulty. The second difficulty is that the *mutwalli* may just have made an application and not given particulars that are necessary. He can then file a statement before the court with proof of the fact (*viz.*, copies of registered letters) that he has made the application and may get his money while he has not done what he should do; it will take an unnecessarily long time to get the *wakf* enrolled.

Khan Bahadur Maulvi AZIZUL HAQUE: But section 52 is there.

I think, Sir, the Hon'ble Minister would do well if he accepted Maulvi Tamizuddin Khan's amendment within his amendment, and that is quite feasible.

Mr. PRESIDENT: In fact, Maulvi Tamizuddin Khan's amendment is an amendment to the Hon'ble Minister's amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: What you are concerned with is to see whether enrolment is actually made or not; further than that you should not penalise.

Mr. PRESIDENT: Well, I do not know whether the Hon'ble Minister will accept it or not.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: If that is the general opinion of this House, I am prepared to accept it.

Maulvi SYED MAJID BAKSH: May I suggest that instead of the word "if" we may put the word "unless"?

The motion of Maulvi Tamizuddin Khan was then put and agreed to

The following motion of the Hon'ble Minister as amended by the motion of Maulvi Tamizuddin Khan was then put and agreed to.

Deposit of decretal amount in Court in certain *wakf* cases.

"67. Where a decree for rent or any other relief claimed under or on behalf of a *wakf* is passed or such decree is executed by any court the decretal amount, if any, shall, unless an application for enrolment of the *wakf* has been made under section 40, or the *wakf* has been exempted from enrolment under section 3, be paid into the court passing or executing the decree, as the case may be, and shall be kept in deposit by the court until an application for enrolment of the *wakf* has been made under section 40 or the *wakf* has been exempted from enrolment under section 3."

The motion that clause 67 as amended and clause 68 stand part of the Bill was put and agreed to.

Clause 69.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 69(*1*), line 2, after the words "as such," the following be inserted, namely:—

"except a suit or proceeding for the recovery of rent or cess by or on behalf of the *mutwalli*."

This clause deals with giving of notice to the Commissioner in every suit or proceeding. I think rent suits are very common and the *mutwalli* has to bring such suits every now and then. Therefore even if in the case of rent suits such notice has to be given by the *mutwalli*, it will mean not only harassment to him, but it will also entail a good deal of expenditure. I think rent suits which are also suits for cesses should be excluded from the operation of this Bill.

Maulvi ABDUL GHANI CHOWDHURY: I accept the amendment, Sir.

Mr. H. R. WILKINSON: We suggest the omission of the words "or cess."

Maulvi ABDUL GHANI CHOWDHURY: I accept this further amendment also, Sir.

The motion of Maulvi Tamizuddin Khan in the following amended form was then put and agreed to:—

That in clause 69(*1*), line 2, after the words "as such" the following be inserted, namely:—

"except a suit or proceeding for the recovery of rent by or on behalf of the *mutwalli*."

Rai Sahib AKSHOY KUMAR SEN: I beg to move that clause 69(*4*) and clause 69(*5*) be omitted.

Sir, clause 69(*4*) as it stands contains a provision to the effect that a decree even if passed by the court shall be void if no notice under sub-section (*1*) were served upon the Commissioner. My objection as regards this clause is that by this clause the Commissioner has been given power of annulling a decree, should he apply to the court within one month from the date of his knowledge of such decree or suit. I think, Sir, this penal clause should not be inserted when it is a decree passed by the court. As regards sub-section (*5*) there is a provision that if no notice under sub-clause (*2*) be given to the Commissioner at the time of the execution of the decree then the Commissioner from the date of his knowledge of the execution of the sale may apply for permission to have the sale set aside. My submission is that, Sir, in such a case the plaintiff, say, a person who has got no interest in the *wakf*, or a stranger, who is a landlord of a tenure belonging to a Muhammadan, if he sues for rent, then he has not only to summon defendants, but he shall also have to issue a notice to the Commissioner. Then, again, the *mutwalli* is going to be given very very wide powers and there is a phrase to this effect in sub-section (*1*), namely that in every suit or proceeding in respect of any *wakf* property, etc. This confers very wide power on the *mutwalli*, for the words are "*mutwalli* as such." My submission is that in addition to serving a notice under sub-clause (*1*) that gentleman, the plaintiff, who may be a foreigner to the *wakf*, shall have to serve a notice under sub-clause (*2*) also. But in the case of an amendment which has now been carried, we find that when a *mutwalli* institutes a suit for rent as plaintiff, he shall be exempt from serving a notice upon the Commissioner, whereas in the case of others, namely, the stranger whose case I have referred to, he shall have to serve two notices. I do not know, Sir, why this sort of invidious distinction should be made; it also involves cost. In connection with an earlier amendment it was taken into consideration that a *mutwalli*, suing for rent, which he has to do off and on, should be freed from this additional burden if he has to serve a notice upon the Commissioner also and on that ground the *mutwalli* was exempted; and Government was also careful enough to exclude the cess because it affected them and they therefore got the word "cesses" excluded and they exempted the *mutwalli* from giving notice under sub-clause (*1*) of clause 69. But in

case of the foreigner he shall have to do this not only once but twice—once at the time of instituting the suit under sub-clause (*1*) and, secondly, at the time of the execution of the suit also. My submission is that considering all these facts and in view of the motion which was carried before, these two clauses should be deleted.

Mr. H. S. SUHRAWARDY: These clauses are very necessary and important. Firstly, they provide the sanction in case the court does not give notices which are necessary and which the court is required to give under sub-sections (*1*) and (*2*). In the second place, it would prevent the *mutwalli* from disposing of the property collusively. He can very well call upon his landlord to file a suit against him for rent and have the property disposed of. I know of an instance where it is being alleged that a Commissioner of the Calcutta Corporation who wanted to swallow up a particular *wakf* property caused the Calcutta Corporation to file a suit for taxes against that property and in the sale that ensued he purchased that property for a song. Instances of this nature cannot arise if these clauses are retained. They are absolutely essential for the preservation of the *wakf* properties.

Khan Bahadur Maulvi AZIZUL HAQUE: I feel, Sir, that before I speak anything about this amendment a few words are necessary from me. On this side of the benches we appreciate the perseverance and efforts of my friend Rai Sahib Akshoy Kumar Sen to improve the Bill. He began with the very first section and I believe we have not yet seen the last. I think he is absolutely consistent (which probably is a great virtue in politics), namely because he has suggested the omission of every clause.

Mr. PRESIDENT: But you cannot also deny that he "omitted" himself altogether from the House. (Laughter.)

Khan Bahadur Maulvi AZIZUL HAQUE: That also, Sir, is quite consistent with his nature. I feel that my friend has not appreciated the reason why the State has come in to pass this legislation. It is a matter of religious disposition, religious acts on the part of Muhammadans and Hindus to create a *wakf* or *debattar*, and if the State intervenes or has intervened in the past by passing various laws, it is in the way of preserving the estates. I think it is well known to my friend that in Madras an Hindu Endowment Act was passed with a view to preserve the estates in a manner in which they were originally intended. This legislation is also a legislation of this nature, namely, to preserve the entity of the estates; and if it is suggested that by deleting these clauses it would in any way help, then I could quite understand it. On the other hand, what do these two

clauses mean? They mean that some sanction is given under the law by which notice to the Commissioner of Wakfs in any suit or proceedings in respect of the *wakf* property is to be given by the court at the instance of the party concerned. I think it is very well known that many transfers have been effected in the past which would never have been done, if there had been somebody to look after the preservation of the estate. That is why it is absolutely essential that these clauses should be retained for the preservation of *wakf* estates. The time has come when the public ought to be awakened to see that no funds are wasted beyond what is absolutely necessary in the interests of the estate. We feel, therefore, that there should be a provision that notice must be given to the Commissioner, who should stand in the position of a man controlling the actions of the *mutwalli* and who will see as to whether a suit is instituted in the best interests of the estate or not, and if you do not want to give notice the history of the last 150 years will be repeated. Therefore, we consider that it is absolutely essential that notice must be given. That is why these clauses and the other clauses are very essential. We feel that it would be a backward step if, from a Bill of this nature, these clauses are deleted. I hope that my friends will now understand the reasons why we are very much anxious for this provision, and I would urge upon them that instead of sympathy for these well-intentioned purposes it would prove to be a real hindrance to the preservation of these *wakf* estates, if these clauses are deleted.

Dr. NARESH CHANDRA SEN GUPTA: Mr. President, Sir, I do not want to say anything further in opposition to this amendment except that I am very much surprised that after having swallowed sub-clause (*1*) that a notice shall be given, the hon'ble member is unable to reconcile himself to sub-clauses (*4*) and (*5*) which only deal with the question of non-service. Does he mean that it is peremptory that a notice shall be given? Supposing even if a notice is not given, I think it does not matter much; but I would suggest a change in the language. The present language is this:—

"In the absence of a notice under sub-clause (*2*) or sub-clause (*3*) the sale shall be void, if the Commissioner, within one month of his coming to know of the sale, applies in this behalf to the court, or other authority under whose order the sale was held." I would like to point out to my friend that if a verbal alteration is made it would perhaps be acceptable to him. In my opinion the language ought to be that the proceedings ought to be "declared" void because if the proceedings are declared "void" there is nothing for the court to do after the declaration had been made. If the intention is to avoid the decree as soon as the Commissioner applies for it, then nothing further follows. If it is said to be a condition of the voidance of the decree or order, then I think the language should be amended so as to put in the word "declared" before the word "void".

(Here the Council adjourned for 15 minutes.)

(After adjournment.)

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, Dr. Naresh Chandra Sen Gupta has suggested a verbal alteration in clauses 69 (*4*) and (*5*) to add the word "declared" before the word "void" and I am prepared to accept it.

Rai Sahib Akshay Kumar Sen's motions were then put and lost.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I beg to move that in clause 69, sub-clauses (*4*) and (*5*), before the word "void" the word "declared" be added.

The motion was then put and agreed to.

The motion that clause 69, as amended, stand part of the Bill was then put and agreed to.

Clauses 70 and 71.

The motion that clauses 70 and 71 stand part of the Bill was then put and agreed to

Clause 72.

The motion that clause 72 stand part of the Bill was put and agreed to.

Clause 73.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Sir, I beg to move that for clause 73, the following be substituted, namely:—

"73. (*1*) If, in the course of proceedings under the Land Acquisition Act, 1894, it appears to the Collector before an award is made that any property under acquisition is *wakf* property a notice of such acquisition shall be served by the Collector on the Commissioner and further proceedings shall be stayed to enable the Commissioner to appear and plead as a party to the proceedings at any time within three months from the date of the receipt of such notice.

Proceedings under the Land Acquisition Act, 1894, I of 1894.

(*2*) Where the Commissioner has reason to believe that any property under acquisition is *wakf* property he may at any time before an award is made appear and plead as a party to the proceedings.

(*3*) When the Commissioner has appeared under the provisions of sub-section (*1*) or sub-section (*2*) no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894, without giving an opportunity to the Commissioner to be heard."

Sir, this is only a precautionary measure to ensure that the *wakf* property is not dealt with under the Land Acquisition proceedings when due notice is given to the Commissioner.

The motion was then put and agreed to.

Clauses 73, 74 and 75.

The motion that clauses 73, 74 and 75 do stand part of the Bill was then put and agreed to.

Clause 76.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in clause 76 for the proposed proviso the following proviso be substituted, namely:—

"Provided that this section shall not so far as it is inconsistent with the provisions of the Bengal Wakf Act, 1934, apply to any *wakf* property in Bengal."

This amendment has been tabled only on account of a printing mistake.

The motion was then put and agreed to.

Clauses 76 (amended), 77 and 78.

The motions that clauses 76 (as amended), 77 and 78 stand part of the Bill was then put and agreed to.

Clauses 78 and 79.

The motion that clauses 78 and 79 do stand part of the Bill was put and agreed to.

Clause 80.

Mr. H. R. WILKINSON: I beg to move that in clause 80 for proposed section 13 the following new section be substituted, namely:—

This act not to apply to *wakf* property in Bengal.

"13. The provisions of this Act shall not, so far as they are inconsistent with the provisions of the Bengal Wakf Act, 1934, apply to any *wakf* property in Bengal."

This merely widens the present section.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: It affects a change in clause 80.

The motion was put and agreed to.

The motion that clause 80, as amended, stand part of the Bill was put and agreed to.

Clause 81.

Maulvi TAMIZUDDIN KHAN: I beg to move that clause 81 be omitted.

This clause seeks to repeal the Mussalman Wakf Act of 1923. That Act so far as I know is a dead letter. I do not know why it is sought to repeal that Act so far as it applies to Bengal. I think that Act ought to stand as it is for whatever use can be made of it. There is no necessity to repeal it.

Maulvi SYED MAJID BAKSH: On a point of order, Sir. This Mussalman Wakf Act is an Act of the Indian legislature. Would it be within the competency of this House to repeal that Act?

Mr. PRESIDENT: Yes. Is it not a fact that sanction has already been obtained in respect thereof?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: From the sentimental point of view I am not in favour of repealing this Act because I think Maulvi Abul Kasem did a signal service by first introducing his Bill in the Assembly and getting it passed into law. But I believe there would be practical difficulties unless we have a short-notice amendment here saying that "so far as it is consistent" or something to that effect otherwise it is not possible. We must have the omission. Therefore, I suggest that this may be postponed and in the meantime Maulvi Tamizuddin Khan might draft something suitable.

Khan Bahadur Maulvi AZIZUL HAQUE: I believe if this clause is deleted and put in 82 (*e*) which says: "nothing in this Act or any repeal thereby shall affect any law not inconsistent with this Act," we might put in that. So if it is suggested that clause 81 should remain, then it might be that the Mussalman Wakf Act in so far as it is inconsistent with the provisions of this Act should be repealed.

Mr. PRESIDENT: What will be the real effect? Is it not going to be repealed?

Khan Bahadur Maulvi AZIZUL HAQUE: It need not be repealed. This Mussalman Wakf Act of 1923 gave certain powers to the District Judges and also certain other machineries were devised.

Mr. PRESIDENT: Was it considered by the Select Committee?

Khan Bahadur Maulvi AZIZUL HAQUE: The Select Committee did consider it. But in view of the manner in which we have changed it, it has taken a different shape because we are not taking away any right from the civil courts.

Mr. H. S. SUHRAWARDY: If I may be presumed to say so, I think the Mussalman Wakf Act of 1923 ought to be repealed. Under this Act the *mutwalli* has certain liabilities and one of these liabilities is that he has to file six monthly accounts in the district court. Now if it is not repealed, that liability will still remain on him while he will have to conform to the other liabilities imposed upon him under this Act. Therefore, it is essential that we should not have too many liabilities imposed on his shoulders and this Act should be repealed.

Mr. PRESIDENT: In my opinion, it is going to be repealed, but I leave it to the Hon'ble Minister to decide his own course.

Maulvi ABDUL GHANI CHOWDHURY: I oppose the amendment. The clause as it stands is all right.

Mr. PRESIDENT: Was any legal opinion taken?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I think so. It ought to be repealed. I have changed my mind after hearing Mr. Suhrawardy, and I think it ought to be repealed.

Dr. NARESH CHANDRA SEN GUPTA: If that is not repealed, it will create a conflict of jurisdiction, because most of the provisions have been incorporated in this Act and powers are given to the Board which were given to the District Judge. So in many cases conflict of jurisdiction will arise.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I think it will be dangerous if the Act of 1923 is enforced when this Act has been passed. The present Bill is a self-contained Bill in which all the necessary provisions have been embodied. If we also repeal the Act of 1923 and

leave the court without jurisdiction, it will only lead to complications without any benefit. As a matter of fact, it is unnecessary because there is nothing in the Act of 1923 which is not embodied in this Act in a more improved and more enlarged manner. I think that, sentiment or no sentiment, the Act of 1923 so far as it relates to Bengal should be repealed and this self-contained Act alone should be allowed to stand.

Maulvi ABUL QUASEM: There is absolutely no justification for the retention of the Act of 1923. After reading the provisions of this Bill, I do not think that for sentimental reasons we should allow the Act to remain simply because it was initiated by a worthy member of Bengal.

The motion was put and lost.

The question that clause 81 stand part of the Bill was put and agreed to.

Clause 82.

Maulvi TAMIZUDDIN KHAN: I beg to move that clause 82 be omitted.

I move it not with a view to press that the whole clause be omitted but with a view to draw the attention of the Hon'ble Minister as to whether clause (*c*) should be omitted and whether a short-notice amendment to that effect should be moved. Clause (*c*) speaks of "anything done or suffered before the commencement of this Act." I do not understand what this means. The *mutwalli* under the present legislation will be required to submit accounts for three years. If this clause stands as it is, there will be difficulty so far as this is concerned. Suppose the *mutwalli* misappropriates Rs. 3,000 a day before this Act is passed, then if this clause stands there would be difficulty in bringing him to justice. It seems to me that sub-clause (*c*) is meaningless and it should be omitted.

Dr. NARESH CHANDRA SEN GUPTA: I do not see if we say "anything under this Act" it will not affect the validity of anything done.

Mr. SARAT KUMAR ROY: Sir, I rise to oppose this motion. This saving clause is an essential feature of the Bill as framed by the Select Committee and aims at preserving the existing rights of people, specially of those who are strangers to the *wakf*.

In spite of what I have heard from the mover, in support of his contention for deletion of this saving clause, I am not convinced in the least; and I fail to understand why a piece of legislation, the object of which is to make provision for better administration of *wakf* property, should be made available for disturbing the right, title and interest, etc., of people already acquired by them under the existing law.

Unless the mover can establish that these rights were acquired under circumstances wholly unwarrantable in point of equity and that it is highly inequitable to allow their enjoyment in future, he cannot justify his contention for disturbing them by the deletion of this saving clause.

I therefore oppose this motion.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: The moment Mr. Sarat Kumar Roy has objected to it, we have begun to suspect. I thought it to be a harmless proposition, but after hearing Mr. Roy as well as Mr. Tamizuddin, I think—I may be wrong subject to correction—, it involves a lot of *wakf* properties which have quite recently been lost and which may be recovered if an attempt is made by the proper authority to recover them. If that is what is being prevented to be done by this clause I deplore it. If really speaking it does any harm to a lot of *wakf* properties which have quite recently been lost and can be recovered under this Act, then I think that part of the clause, at least that sub-clause (*c*), should be omitted. I leave it to the Hon'ble Minister to decide: he has actualy studied the whole thing.

Mr. S. M. BOSE: I do not agree with my friend Mr. Roy in what he says about clause 82. I oppose this amendment on the ground that ordinarily no law is retrospective. I believe that similar sections are to be found in every Act, and I do not understand why there should not be this safeguard in this Act also. I therefore oppose the amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: By this time we feel that so far as clause (*c*) is concerned, it does not convey any meaning unless it is intended to mean that whatever might have been done by the *mutwalli* is validated, because it is laid down that nothing in this Act or in any repeal effected thereby shall affect anything done or suffered before the commencement of this Act. I think any stranger might think that any act which the *Kazi* might have done is validated by this Act. On the other hand, it might bring the *mutwalli* within this plea that he will not be bound to account for his deeds for three years because that is with reference to the thing which was committed before the commencement of this Act. Anything which has not been lawfully done

should, I think, come within the purview of this Act. So far as Mr. Sarat Kumar Roy's grievance is concerned, he is protected by clause (*a*), because if there is any liability incurred before the commencement of this Act, it will not be affected. Thus, he has no grievance. But so far as clause (*c*) is concerned, it is not only with respect to a stranger, but it might be interpreted in respect to a *mutwalli* also. Therefore, I think that anything which has not been lawfully done before the commencement of the Act should come within the purview of this Act.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I may assure the Kumar Sahib that so far as this Bill is concerned, it does not in any way affect the rights and privileges of the strangers, and even the omission of this clause will not affect them. But still, as the Khan Bahadur has said, the retention of clauses (*a*) and (*b*) shall certainly give all the protection that the Kumar Sahib wants. I feel that there is some point in the desire to omit clause (*c*). I am not absolutely certain, but I have an idea that so far as the proviso to section 29 is concerned, it might conflict with clause (*c*), that is to say, you cannot give the *mutwalli* a *carte blanche*. Mr. Bose has said that he does not want any retrospective effect to be given to this Act, but so far as that is concerned certainly the Commissioner of Wakfs may not call for any explanation for any and every action that happened before the Act was passed; only those things that have been legally done cannot be taken to task. But if certain things have been illegally done, then we have provided that only for three years account can be called for. If the House agrees to have a short-notice amendment omitting clause (*c*), then I think we will not have any objection.

Mr. H. S. SUHRAWARDY: Will it not be better if Government consult their legal advisers and put up a revised clause before the House? As an example I give you the case of a certain *mutwalli*, who has embezzled Rs. 4,000. The *wakf* property is at present under the control of the Official Receiver who does not like to file any suit against the *mutwalli*. Those interested in the *wakf* have no doubt whatsoever that the *mutwalli* has misappropriated the amount. Now, what will be the result of the inclusion of clause (*c*)? Would it mean that the Commissioner will be unable to proceed against that *mutwalli* for removal or take steps for the preservation of the *wakf* merely because he has misappropriated before the passing of the Act. The clause says that nothing in this Act shall affect anything done or suffered before the commencement of the Act: will it mean that the Commissioner and the Board can only take notice of the *mutwalli's* action committed after the commencement of the Act? I do not think that we

are going to finish the Bill to-night and I suggest that Government should, if possible, consult their legal officers and let us know to-morrow.

Maulvi Tamizuddin Khan's amendment was then put and lost.

The motion that clause 82 stand part of the Bill was then put and agreed to.

New clause 82A.

Maulvi ABUL QUASEM: I beg to move that after section 82, the following section be added, namely:—

"82A. All actions taken and all things done under the following Acts and all notifications issued and orders made in pursuance of the following Acts shall be deemed to have been validly taken, done, issued and made:—

(*i*) Regulation XIX of 1810.

(*ii*) Act XX of 1863—The Religious Endowments Act, 1863.

(*iii*) Act VI of 1890—Charitable Endowments Act, 1890.

(*iv*) Act V of 1908—Civil Procedure Code, 1908, sections 92 and 93.

(*v*) Act XIV of 1920—Charitable and Religious Trusts Act, 1920.

(*vi*) Act XLII of 1923—Mussalman Wakf Act, 1923."

Sir, I may tell the House at once that this amendment of mine is taken almost *verbatim* from the Bill of the expert committee presided over by Sir Zahid Suhrawardy. They recommended in their wisdom that some such clause should be embodied in the Bill. I do not know what considerations guided the Select Committee in omitting this provision. In my humble opinion I feel that this should be embodied in this Act. It is necessary, reasonable and logical, and I commend it to the acceptance of the House.

Dr. NARESH CHANDRA SEN GUPTA: I think that we in the Select Committee omitted this clause, because it is covered by the provisions of the Bengal General Clauses Act, 1897.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Government unfortunately have to oppose this amendment. The reason is that according to the Bill as drafted by the Zahid Suhrawardy Committee this proviso was relevant, but as the whole thing has been changed, it is

not possible for us to accept it. Over and above that we have the authority of Dr. Naresh Chandra Sen Gupta that this is not necessary as it is covered by the Bengal General Clauses Act. Therefore, we think that Government have got to oppose it and it is not possible for them to accept the amendment.

Maulvi Abul Quasem's motion was then put and lost.

Clause 83.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to that in sub-clause (2) of clause 83, before sub-clause (*a*), the following sub-clauses be inserted, namely:—

"(*1a*) the manner in which the net available income of a *wakf* shall be determined;

(*1aa*) the exemption of *wakfs* under section 3."

I also move that for sub-clause (*a*) of clause 83(2) the following sub-clause be substituted, namely:—

"(*a*) the delegation of powers by the Commissioner to Commissioners of Divisions, to Collectors and to other persons."

Sir, as far as the first amendment is concerned, it is necessitated because of the change from the gross to the net income and it is better that it should be prescribed by rules.

As far as amendment No. 294 is concerned, this has been moved merely to provide for delegation to other persons because as you are aware that Government have reserved the power that only in cases where they think proper, they will give sanction to the employment of Government servants. Therefore, it is necessary that the right of delegation to other persons should also exist, because in places where we cannot employ Commissioners of Divisions and Collectors, we may have to employ the services of other persons, so that if Government totally refuse to give us the services of Government servants it may be possible to have any other non-official agency to take up the work in the *mufassal* and thus decrease the expenses to be incurred, if the Commissioner has to go personally to all the districts of Bengal. I hope the House will accept these two amendments.

The motions were put and agreed to.

Mr. H. R. WILKINSON: I beg to move that in sub-clause (*h*) of clause 83(2) the figures "63" be omitted.

I also move that in sub-clause (*h*) of clause 83(2) after the figures "66" the word "and" be added.

I also move that in sub-clause (*i*) of clause 83(*2*), in line 4, for the figures and words "section 64," the word, figures and letter "section 65A" be substituted.

I also move that sub-clause (*j*) of clause 83(*2*) be omitted.

I also move that in clause 83(*2*), after sub-clause (*j*), the following be inserted, namely:—

"(*k*) the service of notices and requisition under section 87."

The motions were put and agreed to.

The motion that clause 83 as amended and clause 84 stand part of the Bill was then put and agreed to.

Adjournment.

The Council was then adjourned till 3 p.m. on Friday, the 23rd February, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Friday, the 23rd February, 1934, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 95 nominated and elected members.

Oath or affirmation.

The following member made an oath or affirmation of his allegiance to the Crown:—

Surgeon-General D. Goil.

STARRED QUESTIONS

(to which oral answers were given)

Distress in the Shyamnagar thana of the Satkhira subdivision.

*85. **Maulvi ABUL QUASEM:** (a) Is the Hon'ble Member in charge of the Revenue Department aware—

(i) that famine conditions are prevailing in the Shyamnagar *thana* of the Satkhira subdivision of the Khulna district; and

(ii) that the district board of Khulna has been compelled to start relief works?

(b) What are the causes which are responsible for the said conditions?

(c) What are the measures that have been taken and are going to be taken by Government to deal with the situation?

(d) What assistance are Government going to render to the district board of Khulna in its efforts to give relief to the distressed people?

MEMBER in charge of REVENUE DEPARTMENT (the Hon'ble Sir Charu Chunder Ghose): (a)(i) No, but there was some distress among the labouring classes.

(*ii*) The district board gave relief by taking up road repairs in this area.

(*b*) Does not arise.

(*c*) Agricultural loans amounting to Rs. 4,500 have been distributed in this area. The situation is being watched by the local officers.

(*d*) This will be considered by Government only if application for such assistance is made by the district board.

Maulvi ABUL QUASEM: With reference to (*a*)(*i*), will the Hon'ble Member be pleased to state what were the causes of the distress among the labouring classes and whether he includes the peasantry among them?

The Hon'ble Sir CHARU CHUNDER GHOSE: No information is available so far as the exact cause of the distress is concerned. The peasantry are not included among the labouring classes.

Maulvi SYED MAJID BAKSH: Will the Hon'ble Member be pleased to state the difference between the expressions "famine" and "some distress"?

The Hon'ble Sir CHARU CHUNDER GHOSE: The distinction between "famine" and "some distress" is one of degree; so there is considerable difference between "famine" and "some distress."

Mr. SHANTI SHEKHARESWAR RAY: Is the Hon'ble Member aware whether there is an officer for looking after the grievances of labourers?

The Hon'ble Sir CHARU CHUNDER GHOSE: I must ask notice of that question.

Maulvi SYED MAJID BAKSH: Will the Hon'ble Member be pleased to let us know if the distress in the present case is on the border line of famine?

The Hon'ble Sir CHARU CHUNDER GHOSE: No.

Mr. NARENDRA KUMAR BASU: Will the Hon'ble Member be pleased to state whether there is any distress among the peasantry there?

The Hon'ble Sir CHARU CHUNDER GHOSE: I should like to have notice of that question

Dr. NARESH CHANDRA SEN GUPTA: Will the Hon'ble Member be pleased to state if famine has ceased to exist ever since Famine Code defined it?

(No reply was given.)

Mr. P. BANERJI: If the Government have no information about the distress in question, will the Hon'ble Member be pleased to state what actuated Government to grant agricultural loan of Rs. 4,500?

The Hon'ble Sir CHARU CHUNDER GHOSE: There was some distress at the time when loans were granted, but it is not known whether the distress is still in existence.

Mr. SHANTI SHEKHARESWAR RAY: With reference to answer (*c*), might I inquire whether Government have received any report from the local officers?

The Hon'ble Sir CHARU CHUNDER GHOSE: Yes.

Mr. P. BANERJI: If it is a fact that the distress is not existing, will the Hon'ble Member be pleased to state why Government propose that further assistance will be given on application by the district board?

The Hon'ble Sir CHARU CHUNDER GHOSE: We do not say that the distress is not existing.

Mr. P. BANERJI: If I have understood the Hon'ble Member correctly, he seemed to have said that the distress was not existing at present.

The Hon'ble Sir CHARU CHUNDER GHOSE: What I said was that Government had no information as to whether the distress was still in existence.

Mr. NARENDRA KUMAR BASU: In (*b*) the questioner has asked the causes which are responsible for the said conditions. Will the Hon'ble Member be pleased to say what are those conditions?

The Hon'ble Sir CHARU CHUNDER GHOSE: I think I have made it clear that famine conditions do not exist.

Mr. SHANTI SHEKHARESWAR RAY: With reference to (*c*), will the Hon'ble Member be pleased to state whether any report has yet been received from local officers?

(No reply was given.)

Chota Chanua Taluk No. 22814 in Chittagong.

*86. **Haji BADI AHMED CHOWDHURY:** (*a*) Is the Hon'ble Member in charge of the Revenue Department aware—

(*i*) that the Government inquired of Babu Jogesh Chandra Roy, *zemindar* of Chittagong, through letter No. 7780, dated the 7th October, 1933, about the amount of rents and cess realised from his tenants of *taluk* No. 22814 named Chota Chanua;

(*ii*) that the yearly revenue of the said *taluk* is Rs. 8,974;

(*iii*) that the cess of the said *taluk* is Rs. 1,440-5-6; and

(*iv*) that it was purchased by the Government on 3rd July, 1933, for Re. 1?

(*b*) If the answer to (*a*) is in the affirmative,—

(*i*) what was the answer received by the Government from Babu Jogesh Chandra Roy;

(*ii*) what was the amount of rents and cess realised in B.S. 1337, 1338 and 1339;

(*iii*) how much of the realised amount was paid to the Government in those years; and

(*iv*) how much money was borrowed by Jogesh Babu for paying off the surplus revenue to the Government?

(*c*) Will the Hon'ble Member be pleased to state whether the area after it was purchased by the Government has been devastated by saline water for want of proper embankments?

(*d*) What is the estimate of expenses to be incurred by the Government for the embankment of the above area in every year?

(*e*) What is the amount of money given to Jogesh Babu during the revisional survey?

(*f*) What was the percentage of actual profit to Jogesh Babu in the above *taluk*?

Secretary to Government, Revenue Department (Mr. Martin) rose to reply. (A MEMBER: "Sir, why is not the Member in charge of the Department replying to this question, seeing he is present?")

Mr. O. M. MARTIN: Sir, may I with your permission read out the answer to this question? I have got the Hon'ble Member's permission.

Mr. PRESIDENT: I have no objection.

Mr. O. M. MARTIN: (*a*)(*i*) The Collector wrote for the information because he had to take possession of the purchased *taluk*.

(*ii*), (*iii*) and (*iv*) Yes.

(*b*) (*i*) and (*ii*) According to the figures supplied by the *talukdar* which have not yet been checked the collections were—

	Rent demand.	Cess demand.	Collections.
	Rs.	Rs.	Rs.
1337	13,902	1,051	5,691
1338	13,902	1,051	5,286
1339	13,902	1,051	4,056
			15,033

(*iii*)

	Rent.	Cess.	Total.
	Rs.	Rs.	Rs.
1337	5,741	374	6,115
1338	2,605	..	2,605
1339	15,367	1,132	16,499
			25,219

The amount paid exceeds the amounts alleged to have been realised from tenants by over Rs. 10,000. (There would, however, be some profits from 12·73 acres of *khas* lands, cultivated with rice.)

(*iv*) This is not known to Government.

(*c*) The Government embankments did not give way at any point in this area. The embankments maintained by the tenants were slightly damaged causing a loss of paddy in a few drones of lands. This was due to the tenants not taking proper care of their embankments.

(*d*) Rs. 1,000 per annum.

(*e*) and (*f*) The *talukdar* was given an allowance at 30 *per cent.* of the total assets of the *taluk*, Government undertaking to maintain the embankments. This works out to Rs. 3,846-5 a year on an asset of Rs. 12,820-5.

Babu HEM CHANDRA ROY CHOUDHURI: Will the Secretary be pleased to state whether the *taluk* referred to has been resettled?

Mr. O. M. MARTIN: I must ask for notice of that question.

Haji Badi Ahmed Chowdhury asked a supplementary question in Bengali.

Mr. O. M. MARTIN: I should like to have notice of that question.

Workers in factories in and about Garden Reach.

***87. Dr. NARESH CHANDRA SEN GUPTA:** (*a*) Has the attention of the Hon'ble Member in charge of the Commerce Department

been drawn to the deplorable condition of workers in the various factories in and about Garden Reach, notably in the workshop of the R. S. N. Company, owing to drastic reductions in the earnings of workers there?

(*b*) Is the Hon'ble Member aware that the discontent among workers has been so intense that a breach of the peace was at one time seriously apprehended?

(*c*) Is the Hon'ble Member also aware that the union of workers approached the authorities of the workshop to discuss the situation, but Messrs. McNeil & Co. refused to discuss matters with the Union?

(*d*) Is the Hon'ble Member aware that a tense situation has been created in the workshop of the R. S. N. Company at Garden Reach?

(*e*) If so, do the Government contemplate taking any steps in the matter?

MEMBER in charge of COMMERCE DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*a*) and (*b*) No.

(*c*) A newspaper report to this effect was seen.

(*d*) and (*e*) Government have no information that such a situation exists, and they do not contemplate taking any steps in the matter.

Maulvi ABDUL KARIM: Will the Hon'ble Member be pleased to state whether Government propose to inquire if the condition of the workers is really deplorable?

The Hon'ble Mr. J. A. WOODHEAD: No, Sir.

Dr. NARESH CHANDRA SEN GUPTA: With reference to answer (*a*), do I understand that Government deny that the condition of the workers is deplorable or that they have no information?

The Hon'ble Mr. J. A. WOODHEAD: No, Sir. I said that the attention of the Commerce Department had not been drawn to their deplorable condition.

Dr. NARESH CHANDRA SEN GUPTA: With reference to (*b*), is the Hon'ble Member aware of the police action which has been taken against a number of labourers in that area.

The Hon'ble Mr. J. A. WOODHEAD: No, Sir.

Dr. NARESH CHANDRA SEN GUPTA: Has the Hon'ble Member made any inquiries into the matter?

The Hon'ble Mr. J. A. WOODHEAD: Not knowing, I could not make any inquiries.

Dr. NARESH CHANDRA SEN GUPTA: Even after the questions were sent?

The Hon'ble Mr. J. A. WOODHEAD: No, Sir.

Mr. P. BANERJI: Will he be pleased to make inquiries from the Hon'ble Member in charge of Police?

The Hon'ble Mr. J. A. WOODHEAD: That is a request for action. What is the object of the inquiry which the member wishes me to make?

Mr. P. BANERJI: As regards the information that police action has been taken and the Hon'ble Member is sitting close by.

The Hon'ble Mr. J. A. WOODHEAD: The members apparently know that police action has been taken.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

License fee from certain rice mills working within municipal areas.

40. Babu SATYA KINKAR SAHANA: (*a*) Is the Hon'ble Minister in charge of the Local Self-Government Department aware—

(*i*) that rice mills working within municipal areas are made to pay a license fee by some of the municipalities but some others do not make any such demand;

(*ii*) that rice mills situated outside municipal areas are not required to meet any such demand;

(*iii*) that the license fee realized from rice mills is over and above the municipal rates for which the mill buildings are assessed; and

(*iv*) that the license fees realized by municipalities from rice mills situated within their ambits are not uniform all over the province, in some it being Rs. 10 and in others Rs. 90?

(*b*) If the answers to (*a*) are in the affirmative, will the Hon'ble Minister be pleased to state whether the Government are considering the desirability of taking steps to remove the anomaly?

(*c*) Is the Hon'ble Minister aware of the present hardship under which the rice mill industry is suffering?

MINISTER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (*a*)(*i*) Yes.

(*ii*) A fee not exceeding Rs. 100 a year may be levied for the use of any place as a rice mill in any union to which section 34 of the Bengal Village Self-Government Act has been extended.

(*iii*) Yes.

(*iv*) They differ according to local conditions, being fixed, under section 370 (*1*) of the Municipal Act, by the municipal commissioners with the approval of Government.

(*b*) No steps are proposed by Government.

(*c*) Yes.

Sale of estates for arrears of Government revenue.

41. Babu SUK LAL NAG: (*a*) Will the Hon'ble Member in charge of the Revenue Department be pleased to lay on the table a statement showing for the Khulna district—

(*i*) the number of estates put up for sale for arrears of Government revenue during the year 1933 as also in 1930;

(*ii*) the number of certificate cases instituted for the realisation of arrears of cesses during the same period; and

(*iii*) what was the road cess demand in 1929-30 and also in the current financial year?

(*b*) Is the Hon'ble Member aware that during the current cess valuation the cess demand has in some cases been enhanced by more than 40 *per cent.*?

(*c*) Upon what standard is the annual valuation of *khas* lands based?

The Hon'ble Sir CHARU CHUNDER GHOSE: (*a*) (*i*) 76 in 1930; 281 in 1933.

(*ii*) 1933-34 (up to 11th January, 1934)—1,525; 1930-31—2,017.

Figures for the calendar years are not readily available.

(*iii*) 1929-30—Rs. 3,83,012-7-10; 1933-34—Rs. 6,23,635-6-4.

(*b*) Yes.

(*c*) The annual valuation of *khas* lands is based on the total rent which is derived from them from the persons in possession whether cultivating *raiyats* or not. Thus the income derived from a *hât* is the basis of the valuation of the land on which it stands. When actual profits are known, lands cultivated by the landlords or their servants can be assessed on the same basis. For lands cultivated by *bargadars* the money value of the landlord's share of the crop calculated on an average of the three years next preceding the revaluation is the annual value. If *khas* lands are culturable but not cultivated,

the annual value is the rent they would be expected to bring in on the average of the rents paid for similar lands both by cash-paying and produce-paying tenants of the estate or tenure.

Babu HEM CHANDRA ROY CHOUDHURI: Will Secretary be pleased to state the year in which cesses have been enhanced by more than 40 *per cent.*?

Mr. O. M. MARTIN: I should like to have notice of that question.

SHORT NOTICE QUESTIONS.

Mr. SHANTI SHEKHARESWAR RAY: (*a*) Is the Hon'ble Member in charge of the Political (Jails) Department aware that political prisoners in Alipore Central Jail lately brought to the notice of the authorities concerned certain grievances affecting their daily life?

(*b*) If the answer to (*a*) is in the affirmative, what are these and what steps do the Government intend taking for their redress?

(*c*) Is it also a fact that failing to get redress of their grievances, the aforesaid prisoners went on hunger strike?

(*d*) If the answer to (*c*) is in the affirmative, will the Hon'ble Member be pleased to state—

(*i*) from which date have they gone on hunger strike;

(*ii*) how many are on hunger strike;

(*iii*) what is the present condition of those prisoners; and

(*iv*) whether there is any apprehension of more prisoners joining the strike?

(*e*) Will the Hon'ble Member be pleased to state whether it is intended to redress the grievances of the aforesaid prisoners and avert any possible calamity?

(*f*) If the answer to (*e*) is in the negative, what steps do the Government intend taking in the matter?

MEMBER in charge of POLITICAL (JAILS) DEPARTMENT (the Hon'ble Sir Charu Chunder Chose): (*a*) and (*c*) A large number of terrorist prisoners in the Alipore Central Jail stopped work on the 15th February, 1934, and five went on hunger strike. On the following day they submitted a petition to the Jail Superintendent stating that they had decided on this course, as in spite of repeated requests, their grievances in regard to their treatment as Division III prisoners had not been redressed.

(*b*) Their grievances relate to the following:—

(*1*) Writing materials.

(*2*) Newspapers and magazines.

(3) Diet.

(4) Washing soaps and toilet articles.

(5) Bed sheets.

(6) Winter clothing (supply of long pants, blankets, *kurtaz* with lining and *kurtaz* with long sleeves).

(7) Tooth brushes and tooth paste.

(8) Indoor and outdoor games.

(9) Better arrangements for interviews with relatives.

(10) Sandals.

(11) Shaving instruments.

As the privileges demanded are only admissible in the case of Division II prisoners, Government propose to take no action in the matter.

(*d*)(*i*) Five prisoners were on hunger strike on the 15th February, 1934.

(*ii*) There are now 18 prisoners of Division III on hunger strike, and one of Division II, who has gone on hunger strike in sympathy.

(*iii*) Satisfactory.

(*iv*) I am not in a position to make any statement on this point.

(*e*) and (*f*) The conduct of the prisoners amounts to a gross breach of prison discipline, and Government cannot consider any of these demands to which they are not entitled as Division III prisoners, so long as the hunger strike continues.

Mr. NARENDRA KUMAR BASU: When were these demands made?

The Hon'ble Sir CHARU CHUNDER GHOSE: The hon'ble member will find the answer contained in (*a*) and (*e*); the date is the 16th of February.

Mr. NARENDRA KUMAR BASU: Is it not a fact that that is the date on which they stopped work because their grievances had not been redressed? Might I know when were these grievances first brought to the notice of the Jail Superintendent?

The Hon'ble Sir CHARU CHUNDER GHOSE: Grievances were really mentioned to the Jail Superintendent before the 15th. The first written representation was received on the 16th.

Mr. NARENDRA KUMAR BASU: Is it or is it not a fact that the demand for additional blankets was made at a time when cold in Calcutta was very severe?

The Hon'ble Sir CHARU CHUNDER GHOSE: The answer is in the negative.

Mr. NARENDRA KUMAR BASU: What was the nature of the grievances regarding diet?

The Hon'ble Sir CHARU CHUNDER GHOSE: They wanted a better diet than was allowed to Division III prisoners.

Mr. NARENDRA KUMAR BASU: Is it not a fact that for some time past it has been the rule in Bengal jails to give a better quality of rice to the literate prisoners than is given to the ordinary Division III prisoners?

The Hon'ble Sir CHARU CHUNDER GHOSE: I must ask for notice.

Mr. NARENDRA KUMAR BASU: Is it not a fact that better quality of rice is given to literate prisoners in the Midnapore and other jails than is given to the ordinary Division III prisoners?

The Hon'ble Sir CHARU CHUNDER GHOSE: The prisoners are not allowed anything which is not provided under the Jail Code. But in particular jails the quality of rice varies, because the quality of rice in some districts may be better.

Mr. NARENDRA KUMAR BASU: Is it not a fact that the quality of rice to literate prisoners in the Alipore Central Jail has been changed during the last few weeks?

The Hon'ble Sir CHARU CHUNDER GHOSE: Not to our knowledge.

Mr. SHANTI SHEKHARESWAR RAY: Have they made any complaints about the ill-treatment by warders and other jail authorities?

The Hon'ble Sir CHARU CHUNDER GHOSE: It does not appear in the petition that was submitted, nor is there any record of such complaint being received.

Mr. SHANTI SHEKHARESWAR RAY: Is it not a fact that these prisoners received the privileges while in other jails?

The Hon'ble Sir CHARU CHUNDER GHOSE: I must ask for notice.

Mr. SHANTI SHEKHARESWAR RAY: Has the Hon'ble Member made any inquiries as to why these prisoners have made these demands all on a sudden?

The Hon'ble Sir CHARU CHUNDER GHOSE: As the member will perceive from the answers already given that the prisoners in question stopped work on the 15th of February and they immediately went on hunger strike, they did not give us any time whatever to make any detailed inquiry.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to make an inquiry now that the grievances have been brought to his notice?

The Hon'ble Sir CHARU CHUNDER GHOSE: The answer is already contained in my answer to questions (*e*) and (*f*).

Mr. NARENDRA KUMAR BASU: Considering that 19 men are on hunger strike, does the Hon'ble Member propose to make a personal inquiry into the matter?

The Hon'ble Sir CHARU CHUNDER GHOSE: The matter will receive consideration.

Mr. NARENDRA KUMAR BASU: What objection has the Hon'ble Member to allow these prisoners writing materials?

The Hon'ble Sir CHARU CHUNDER GHOSE: Writing materials are not allowed to Division III prisoners.

Mr. NARENDRA KUMAR BASU: Will the Hon'ble Member be pleased to state whether he or his department has tried to get relations of these prisoners to interview them in order to induce them to give up the hunger strike?

The Hon'ble Sir CHARU CHUNDER GHOSE: The answer is no.

Mr. NARENDRA KUMAR BASU: Does the Hon'ble Member propose to consider the suggestion made?

The Hon'ble Sir CHARU CHUNDER GHOSE: As the members are aware, all reasonable representations made by them are fully inquired into, and in this instance also all reasonable representations will be inquired into.

Dr. NARESH CHANDRA SEN GUPTA: With regard to the supply of writing materials, is it not a fact that at the Alipore Jail exercise books with marked pages and pencils were allowed to literate Division III prisoners before this?

The Hon'ble Sir CHARU CHUNDER GHOSE: Prisoners are allowed writing materials with the permission of the Jail Superintendent and when they want to write.

Mr. NARENDRA KUMAR BASU: Is it meant that in this particular case these prisoners wanted writing materials without the permission of the Jail Superintendent?

The Hon'ble Sir CHARU CHUNDER GHOSE: In the written petition that was submitted, there is no mention that prisoners wanted writing materials and that they were refused by the Superintendent.

Dr. NARESH CHANDRA SEN GUPTA: Has the Jail Superintendent made any comment in sending up the prisoners' petition?

The Hon'ble Sir CHARU CHUNDER GHOSE: Yes, the Jail Superintendent has reported that none of these demands is allowable to Division III prisoners under the Jail Code.

Mr. NARENDRA KUMAR BASU: If these demands are not ordinarily allowable under the Jail Code, is there anything to prevent Government from acceding to such of these demands as seem to them to be reasonable?

The Hon'ble Sir CHARU CHUNDER GHOSE: Yes, but these prisoners have taken up a most defiant attitude. They have asked for a whole string of privileges which are not allowable to Division III prisoners.

Mr. SHANTI SHEKHARESWAR RAY: Might I inquire whether these prisoners assaulted anybody or has there been any unruly behaviour on their part?

The Hon'ble Sir CHARU CHUNDER GHOSE: I have nothing further to add.

Mr. P. BANERJI: What objection can there be to the supply of long pants, particularly during the winter season?

The Hon'ble Sir CHARU CHUNDER GHOSE: We have to proceed according to certain rules, and these pants are not allowed under the Jail Code Rules to Division III prisoners.

NON-OFFICIAL BUSINESS

NON-OFFICIAL MEMBERS' BILLS.

The Bengal Wakf Bill, 1934.

The debate on the Bengal Wakf Bill was resumed.

Clause 85.

Maulvi ABUL QUASEM: I beg to move that in clause 85(*1*), line 3, for the word "interest," the word "damages" be substituted.

Sir, my object in moving this amendment is that because interest is prohibited by Islam, we should not provide for interest being payable by a *mutwalli* to the Commissioner of Wakfs. Under clause 14 of this Bill the Commissioner is to be a Muslim and the *mutwallis* also in 99 cases will be Muslims. There is no reason why between these parties who are all Muslims anything like interest should be charged or realised. I am aware, Sir, that the word "interest" occurs in one other clause of the Bill, namely, in clause 55. In clause 55 the word "interest" also occurs, and if I did not raise any objection to the retention of that word in that clause, it was because that clause provides for raising a loan by the Commissioner and because in a loan transaction non-Moslems may be involved and money probably could not be raised if interest was not allowed. But here, Sir, there is no question of interest coming in. I would refer the House to clause 35. In clause 35 the word "damages" is used. That is in connection with the case where a *mutwalli* refuses to pay or does not pay any revenue, cess, rates and taxes due to Government or to any local authorities and the Commissioner may discharge the dues from the Wakf Fund and then proceed to recover the same from the *wakf* property and may also recover damages at 12½ *per cent.* of the dues from the *mutwalli*. Here, Sir, the very same contingency will arise, and I do not know how the draftsman of this Bill has, instead of the word "damages," used the word "interest." In this connection I would like to bring one matter to the notice of the Council. There may be *wakf* foundations of which the *mutwalli* in charge will be a spiritual preceptor, *e.g.*, a *sajjadanashin*. He is charged with the duty of giving spiritual guidance and solace to his disciples. If you compel him to pay interest, it will go against the grain of the faith that is in him. Only the other day, out of respect to the faith of a certain community, namely, the Dawoodi Bora community, this House decided to exclude them from the operation of this Bill. It cannot, Sir, I presume be the intention of this House to compel anybody to pay interest when it is against his religious belief and faith to pay such interest. We are living in unregenerate days. Under the stress of necessity Muslims have to pay interest if not to take interest. In a transaction between Muslims and non-Muslims, the question of interest may be very pertinent, but in a transaction between Muslims alone there is absolutely no justification for provision of interest. So I hope in the interest of consistency, there should be no objection to the substitution of the word "damages" for the word "interest." Sir, I can visualise no situation where a *mutwalli* would be asked to pay anything like interest; if he has delay for an unduly long time payment of any dues of the Commissioner or of the Board, he may be penalised by way of damages and the purpose in view will very well be served if we substitute the word "damages" for the word "interest." I, therefore, commend my motion to the acceptance of this House.

Maulvi ABDUL GHANI CHOWDHURY: I do not think there is any objection to accepting this amendment.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: We too have no objection.

The motion was put and agreed to.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that in sub-clause (2) of clause 85, in line 2, for the word "Certificate" the words and figures "Requisition in the form prescribed under the Bengal Public Demands Recovery Act, 1913"; and that in line 4 for the word "certificate" the word "requisition" be substituted.

The motion was put and agreed to.

The motion that clause 85 as amended stand part of the Bill was then put and agreed to.

New clauses 85A and 86.

Mr. H. R. WILKINSON: I beg to move that after clause 85 the following clause be inserted, namely:—

"The Commissioner and every officer and servant of the Board shall maintain secrecy about the particulars and all other information relating to a *wakf-al-al-aulad* which comes into his possession in his capacity as Commissioner or as an officer or servant of the Board."

Commissioner and officers and sevants to maintain secrecy about particulars of *wakfs-al al-aulad.*

The reason for this amendment has been discussed earlier in the proceedings, and I do not think I need add anything.

Maulvi ABDUL GHANI CHOWDHURY: I would ask the Hon'ble Minister to change the word "*wakf-al-al-aulad*" in the third line to "*wakfs*" only.

Khan Bahadur Maulvi AZIZUL HAQUE: I am afraid, Sir, this provision would be inconsistent. There are certain things upon which information has to be given to the public, and it seems reasonable that this information should be available to the public, subject to rules made in this behalf. Once by statute you say that they shall maintain secrecy, I think this provision will be inconsistent.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I think the point of the Khan Bahadur will be met if the following words are prefixed to our amendment, *viz.*, "Subject to the provisions of this Act."

Then the following amended motion was put and agreed to:—

Commissioner and officers and servants to maintain secrecy about particulars of *wakfs-al-al-aulad*.

"Subject to the provisions of this Act, the Commissioner and every officer and servant of the Board shall maintain secrecy about the particulars and all other information relating to a *wakf-al-al-aulad* which comes into his possession in his capacity as Commissioner or as an officer or servant of the Board."

The motion that the new clause 85A as amened and clause 86 stand part of the Bill was put and agreed to.

Clauses 87 and 88.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that to clause 87 the words "or in such manner as the Local Government may prescribe" shall be added at the end.

The motion was put and agreed to.

The motion that clause 87 as amended and clause 88 stand part of the Bill was put and agreed to.

New clause 88A.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I beg to move that after clause 88, the following clause be inserted, namely:—

Trial of offence.

"88A. No Court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence punishable under this Act."

Khan Bahadur AZIZUL HAQUE: I have only this much to say, that we could not consider this amendment in the Select Committee because it is a new clause. But I fear that it will put a difficulty before a *mutwalli*. The reason is that Magistrates of the First Class and Presidency Magistrates have certain powers by which they can try cases and they may not be available. That question should also be considered at this stage. There would be a real difficulty in the way of the *mutwalli* unless of course we specifically provided for an appeal. I should consider that if it is the intention that the *mutwalli* in his administration of the *wakf* property should not be put to any unnecessary difficulty, he should be free of appeal powers rather than that a restriction should be placed on the power of a trying Magistrate.

Dr. NARESH CHANDRA SEN GUPTA: I beg to support the amendment of the Hon'ble Mr. Nazimuddin. I do not see what difficulty there would be. Where there is a Second Class Magistrate, there is also a First Class Magistrate. The Board may prosecute the man before a First Class Magistrate or before any other Magistrate. As to the sentence to be passed, that will depend upon the discretion of the Magistrate. He can pass a sentence which will not be appealable.

The Hon'ble Mr. Khwaja Nazimuddin's motion was put and agreed to.

Clauses 89 and 90.

The motion that clauses 89 and 90 stand part of the Bill was put and agreed to.

New clause 91.

Haji BADI AHMED CHOWDHURY: I beg to move that after clause 90 the following new clause be added, namely:—

"91. It shall be permissible to the *mutwalli* of any *wakf* to place his *wakf* estate under the management of the court of wards notwithstanding any previous statutory bar thereto."

The member made a speech in Bengali in support of his motion of which the following is a translation:—

Mr. President, I beg to propose that after section 90 a new section No. 91 be added as follows: "Notwithstanding the contrary provisions in any Act passed before this, no *mutwalli* shall be debarred from placing the *wakf* property in his charge under the court of wards' management."

In most of the districts of Bengal, especially Chittagong, the *wakf* properties consist of temporarily-settled Noabad estates, of which the revenue system is revised every ten years. When the revenue of the Noabad estates in Chittagong was revised during the years 1924-29 the price of paddy was Rs. 3 per maund. But the situation has completely changed since. The price of paddy has at present gone so far down as Re. 1 per maund. In many cases even the Government revenue cannot be met out of what is realised from the sale of the entire quantities of paddy and jute yielded by the lands under the said temporarily-settled estates. Many *wakf* and *debottar* properties in Chittagong, consisting as they did of temporarily-settled Noabad *taluks*, have been sold by auction for default in the payment of Government revenue. In the case of Babu Jogesh Chandra Roy's estate in Chittagong, it was found by Government as the result of their inquiries held after the estate had been put to auction and sold off, that the total amount of rents realised from it for each one of the years 1337-39 B.S. was Rs. 15,033 only, but the amount of Government revenue payable annually by the said estate was Rs. 25,219 during the years mentioned before. In these circumstances, no *mutwalli* or Wakf Board can be expected to do full justice to the task of managing the properties committed to their charge. Moreover, the economic distress has become so acute that no purchaser is available for an estate when it is put to auction, with the result that it is the Government themselves who have alone to bid at such auction. This has been the case with almost all the *khas mahal* estates in Cox's Bazar subdivision in Chittagong. These properties may be saved from revenue sale if they are placed

under the management of the Government. No provision has been made in the Bill in question for the management of the *wakf* properties in case the *mutwallis* who are unable to cope with the economic crisis before them lay down their charge of the *wakf* properties. Although the Bill contains a provision for filling up such vacancies by new appointments, it seems extremely doubtful if any *mutwalli* would be found who would agree to step into the shoes of those experienced *mutwallis* who vacated their office in spite of the distinct advantage they possessed in their hereditary skill in the management of *wakf* properties. The Bill also does not empower the Wakf Board to administer such *wakf* properties. It is for this reason that I want to incorporate the proposed section into the Bill before us. I hope that the Hon'ble Minister and my friend Maulvi Abdul Ghani will kindly extend their support to my amendment for providing the necessary safeguard for Moslem properties.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, I have been asked by my friend Haji Badi Ahmed Chowdhury to explain his intention in bringing forward this amendment, and I do so with pleasure as this is an amendment in which I have full sympathy and an amendment which, at the earlier stages of the discussion of this Bill, I moved. When the Bill was at the Select Committee stage, I moved an amendment to this effect, but I was given to understand that such an amendment was not permissible in an Act like this, as it affected another legislative Act passed by the Government of India and, therefore, I did not move an amendment here. What is intended is this: At the present moment the practice is that any estate, however badly managed, if it happens to be either *wakf-al-al-aulad* or *wakf Indallah*, the court of wards refuse to take it under its management not because there is anything in the Court of Wards Act itself against such action, but because under the provisions of the Act of 1863, I mean the Religious Endowments Act, a public servant is forbidden to take the management of any charitable trust in his own hands. Under that particular Act the court of wards, in every case, refuse to take charge of the management of a *wakf* estate. Sir, you are aware that the whole of the Nawab of Dacca's estate is under the management of the court of wards, but the *wakf* portion of it, although it is managed by the same manager as *naib-mutwalli*, is not legally in charge of the court of wards. There are many estates in this province which are grossly mismanaged by the present *mutwallis*, and it is very much to the interest of the estates that it should be permissible for the court of wards to assume charge of them. We know that many proprietors of the present estates would be very pleased indeed to hand over their *wakf* properties to the court of wards. If it assume charge of them, it will conduce not only to the welfare of those estates, but will also be in the interest of the public *wakfs*. But whenever an application

is made to the court of wards, it always puts forward excuses to the effect that under the Act of 1863, which I have already cited, it is precluded from doing so. For that reason, Sir, while this Bill has been brought forward for the proper management of all *wakf* estates in Bengal, it is only necessary that a provision like this should also be made in this Bill. In this connection, Sir, I should like, with your permission as well as that of the mover of the amendment, to slightly alter the language and not the substance. I would suggest the following: it is merely a linguistic alteration:—

"Notwithstanding any provision in any other Act, it shall be lawful for the court of wards to assume charge of a *wakf* estate at the instance of the Commissioner of Wakfs, if in the opinion of the Commissioner such a management is necessary in the interests of the estate."

I think this is an amendment which should not be opposed by anybody. After all, it is to everybody's interest that estates—*wakfs* or not—should be properly administered by the court of wards, and there is no reason why the court of wards should not assume charge not only of the *wakfs-al-al-aulad* but also of *wakf-Indallah*. Therefore, I hope the Member in charge of the Bill, as well as the Government, will accept the amendment in the form in which I have put it and will not raise any objection.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, I accord my support to this amendment. I am just informed by a gentleman who was Commissioner of a Division, that there are practical difficulties in taking over *wakf* estates under the management of the court of wards. Sir, I do not know what the principle is that stands in the way of the court of wards assuming charge of a *wakf* estate. The court of wards may, perhaps, have some valid reasons for its action, but I am not aware of it. Sir, when I find that an ex-Commissioner of a Division could not find any reason for the court of wards not assuming control and management of *wakf* properties, I believe there is absolutely no valid reason for the court of wards for refusing to assume charge and saving such properties from difficulties and probably ruin. I agree with the gentleman who spoke in Bengali, though his speech was greeted with laughter from some members of this House. I agree with him that this proposal of his is a right one, and I do not know for certain whether we shall be permitted under the existing law of the land to interfere with the Act which has been passed by the Legislative Assembly, and not by this House. However, if it is legal for us to accept this proposition, I think we should not hesitate in doing it. If it is done for the Muslims to-day, I hope it will be done for the Hindus as well in future, and a lot of *debutter* properties will also be saved by better management of these properties. It is with diffidence

that I am speaking, because I do not know whether we shall have power, really speaking, to enact something which may be taken as an amendment of an Act of Supreme Council. But if we have power to do so, the Government member may kindly enlighten us. We would then amend it.

Khan Bahadur Maulvi AZIZUL HAQUE: I may say at the outset that I am in entire sympathy with the object of my friend Haji Badi Ahmed Chowdhury, as also Khan Bahadur Momin when they say that something should be done at this stage to see that these *wakf* properties should be administered by the court of wards. I have discussed this matter, and I feel that there are also considerable difficulties. The primary difficulty which has just been pointed out, and a matter which should be very carefully considered, is that the whole purpose of creating a *wakf* is to administer the property by a *mutwalli*, and once the court of wards accept the administration, the *mutwalli* ceases, and he will not be entitled to any remuneration for the management of the estate. His remuneration is only on the score of management, and when the management is taken away from the *mutwalli*, it seems to me that the question of remuneration also should be considered. Then, there are other difficulties, one of them is after all in a *wakf* property material benefits are not the only criterion. There are other things; religious things have to be done, and how those things can be done is a matter which we cannot hurriedly take up. At the same time, if we find that the management of the court of wards is no longer a benefit on behalf of the *wakf* property, and is a cause of local friction, it can always be changed. And if the management as interpreted by Government, and for various other considerations the management of the court of wards is accepted, I do not see why the *mutwalli* should not accept it stage by stage and take the responsibility on behalf of endowed estates only and carry out certain religious purposes, when anything concerning religion is considered. I agree that in view of its very complicated nature, and the ultimate effect on various properties, I would suggest that the Hon'ble Member should agree to convene at a very early date a small Conference to discuss this matter both from the point of view of administrative difficulty as well as the religious aspect, and if the Government encourages it, and any agreement is arrived at, a private Bill or a Bill by Government is introduced, I think the mover should withdraw his amendment, because I think the question has not been sufficiently examined by us in all its bearings.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I am grateful to Khan Bahadur Azizul Haque for making my task so easy. He has clearly explained the difficulties that we are faced with. By such a short notice it is not possible for me to give any undertaking, because it relates to another department, who are also involved, the Revenue

Department. I think the real difficulty regarding the *mutwalli* being dispossessed of his management is very great. It is not so much the management of the court of wards as the religious aspect. The *mutwalli* being the trustee and manager of all *wakf* properties causes all these difficulties. Therefore, I would suggest that while the Mussalman Associations and the Mussalman Anjumans also discuss the case in its various aspects, Government will also look into it, and see if anything can be done. While I do not give any definite promise about a Conference, perhaps an informal discussion with some members of this Council will be more suitable; besides, it will be at least another year before this Act is in full operation. In the meantime, if it is found that the thing is practicable, we can have another amending Bill. Therefore, I would ask the mover to withdraw his amendment, and not to press it.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Since the original mover of the amendment withdraws it, I do not think I can press it, though I am not satisfied with the answer of the Hon'ble Minister.

Mr. PRESIDENT: A withdrawal must always be unconditional. The motion was by leave of the House withdrawn.

Clause 31.

Mr. PRESIDENT: We shall now go back to clause 31 which has not been disposed of.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I propose that the following clause be substituted for clause 31, *viz.*—

"31. The Commissioner shall be bound to comply, as far as possible, with any request made by the Board for the supply of any information or the production of any document relating to a *wakf* or for the summoning of any witness whose attendance may be required:

Information required by the Board.

Provided that in the case of a *wakf-al-al-aulad* the information or document or the attendance of the witness is required for the due performance of any duty of the Board under this Act in relation to such *wakf-al-al-aulad*."

Mr. PRESIDENT: It is your intention to replace your original motion by this?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Yes.

The motion was put and agreed to.

The motion that clause 31 as amended stand part of the Bill was then put and agreed to.

General.

Maulvi ABUL QUASEM: With your permission, Sir, I would only add a few words to my amendment. I beg to move that for the word "Mussalman," wherever it occurs in the Bill, the word "Muslim" be substituted, except in the case of the "Mussalman Wakf Act of 1923."

My reason is that the word "Mussalman" is not a correct word. The word "Moslem" is not correct also. The word should be "Muslim," and I desire that this correct word should be adopted in this Bill, and this will give a lead in the use of the correct word.

Khan Bahadur Maulvi AZIZUL HAQUE: Might I suggest whether another amendment will be necessary, if the word "*wakf*" should be substituted by the word "*waqf*." (Laughter.)

The motion of Maulvi Abul Quasem was put and agreed to.

Maulvi ABUL QUASEM: I will not make any speech. I will just move the following amendments formally. I beg to move that for the words "the Mussalman faith" wherever they occur in the Bill the word "Islam" be substituted.

I also move that for the words "Mussalman law" wherever they occur in the Bill the words "Islamic law" be substituted.

I also move that the words "Wakfs Fund" wherever they may occur in the Bill, the words "Wakf Fund" be substituted.

The motions were put and agreed to.

Preamble.

The motion that the preamble stand part of the Bill was then put and agreed to.

Maulvi ABDUL GHANI CHOWDHURY: I beg to move that the said Bill, as settled in Council, be passed. In doing so, Sir, I need hardly make a speech. The object of the Bill has been unanimously appreciated and its importance emphasised with one voice all over the province and in this House. To make it practical and workable and to meet all interests, its provisions have been very carefully thought out by the Select Committee and scrutinised by the hon'ble members of this House. I am not sorry if my original Bill has been changed in the opinion of my venerable colleague Maulvi Abul Kasem of Burdwan, "log, stock and barrel." I feel rather extremely lucky that an humble member of this House like myself has been able to engage the attention of all the sections of this House in revising my Bill. It is gratifying that prominent Hindu members also have interested themselves in our domestic affairs. This attitude has inspired me with a hope for a great future of this province.

If the House has changed and modified my Bill, it has simply justified its own existence. Whether the Bill, as settled by the House, is altogether different from the original Bill is now a question of historical interest. This much I can say, that all that I contemplated to provide for has not been accepted by this House. Of that I have no right to make a grievance. The collective wisdom must prevail. Law is not logic but experience. The future alone will test its perfections or imperfections. The members of this House have all sincerely endeavoured to make it as perfect as it is humanly possible for them to do. But no human scheme is perfect. Conscious as I am of my own limitations I have fully realised the amount of help, guidance and advice that I have incessantly received from all my friends and colleagues here, particularly Mr. A. K. Fazl-ul Huq, Khan Bahadur Abdul Momin, Khan Bahadur Azizul Haque, Dr. Naresh Chandra Sen Gupta and Mr. Syamaprosad Mookerjee. Besides, the Hon'ble Mr. K. Nazimuddin on behalf of Government has taken infinite pains and substantial interest in pushing through this Bill. The amendments he has carried have settled a very great controversy. But for his tact and co-operation the Bill, I am afraid, would have been defeated. It is not for me alone but for the whole Muslim community to thank all these personalities and the members of the House—Muslims, Hindus and Europeans and the Government alike—for the Bill that they have settled. It is the joint product of their learning, wisdom, intellect and experience. I hope it will bear the fruit that we all sincerely desire to have.

With these few words I move that the Bill as settled be passed.

Khan Bahadur Maulvi MUHAMMAD ABDUL MOMIN: In supporting the motion, I beg to offer my sincere congratulations to my young friend Maulvi Abdul Ghani Chowdhury, for the signal service which he has rendered not only to the Muslim community, but to the public at large by bringing this Bill. Sir, as you are aware, my young friend is one of those members of this House who take no delight in putting his finger into everybody's pie. He seldom speaks in this House, and does not ordinarily interfere in the business which is carried on in this House unless he is particularly interested in it. But by bringing this Bill and by getting it through this House, he has done more than most of us combined have done here. I also congratulate the Hon'ble Minister, Mr. Khwaja Nazimuddin, for having given his wholehearted support to this Bill. Whatever political sins of commission and omission the Hon'ble Minister might have done during his term of office have been washed away by two of his acts—firstly, the Primary Education Act, and secondly, the assistance which he has rendered in passing the Bengal Wakf Act. The Wakf Act, as it has now emerged from this House, perhaps does not contain all that we would like it to contain, but I think it contains enough for the

purpose for which this Bill was brought by my young friend. What was urgently needed was proper control and supervision over the management of the *wakf* estates. In this connection it will not be right, if I did not mention the great efforts which were originally made by the most senior member of this Council, Maulvi Abul Kasem, on this behalf. He was the first who moved and successfully moved the Act of 1923 in the Legislative Assembly, and it may not be known to the House that he has ever since done his best to bring the Act into force effectually in this province. But so far he has failed, and where he failed my young friend has succeeded, and I wish him all luck and joy in his great work.

Dr. NARESH CHANDRA SEN GUPTA: I wish to join in the congratulations to my young friend not only on the great step which he has taken on behalf of his community but also on the fact that he has succeeded in passing this Bill in this Council which is a rare piece of luck for a non-official member. I may also congratulate the Moslem community in the good sense which they have shown in giving support to this Bill, and I have no doubt that this will greatly help in the advancement of the community. I hope and trust that my community will take a lesson from the act and give us the same general support on any question that may concern us in future.

Mr. H. S. SUHRAWARDY: May I congratulate Maulvi Abdul Ghani Chowdhury on having initiated a Bill the end of which we have seen to-day. I am unable to say whether he appreciates being called a young man and patted on the head, and hence I will refrain from calling him one. I too have suffered in my time from the condescension of my elders, and now I have ceased to appreciate it. Our heartfelt thanks are also due to the Sir Zahid Suhrawardy Committee without whose expert advice it would have been impossible for the Select Committee and the Council to pass this measure, for the labour they have put in in preparing a draft Bill. But the fact that it has been piloted so satisfactorily and smoothly through the Council is largely due to the sympathetic treatment of the Hon'ble Minister and his advisers. We cannot possibly overlook all the labour which Mr. Wilkinson has put in this Bill, and the care and attention which he has bestowed on it, and the useful amendments which he has put in even at this late stage to improve the Bill. Now what we expect the Hon'ble Minister to do is to bring it into operation, and we hope that he will do it as early as possible. Moreover, the Bill will not be of very much value unless proper men are chosen to handle it. He will therefore have to exercise a great deal of caution in making the selections. But the common sense which the Hon'ble Minister has shown and his obvious anxiety to place a practical measure on the

statute book make us feel confident that he will pay that proper attention which the measure requires. We hope that this Bill will come into force as soon as possible, because the sooner the mismanagement of *wakfs* is put a stop to the better.

Khan Bahadur Maulvi AZIZUL HAQUE: I join in the congratulations of my friends to the Member in charge of the Bill. I confess that at times we thought that the fate of this Wakf Bill was sealed. There was such a great controversy over the general *wakf* and *wakf-al-al-aulad* that most of us were nervous as to the ultimate fate of this Bill. I certainly congratulate the Hon'ble Minister and the Government on the successful way in which they have avoided the whole danger and brought out this measure in a way which has been acceptable to the House. So long this matter was not handled in the proper way. But in the future there is no fear of anybody, whether he is a *mutwalli* of a general *wakf* or of a *wakf-al-al-aulad*. I highly appreciate the efforts of the Hon'ble Minister and Mr. Wilkinson in which they have tried to settle acute differences of opinion. I feel that it is largely due to their efforts that very acute controversies over delicate matters have come to a successful issue.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I would like most wholeheartedly to join with the other members of the House in congratulating Mr. Abdul Ghani Chowdhury for the Bill which he has brought before the House and which has been converted into an Act. Congratulations are specially due to Maulvi Abdul Ghani Chowdhury for this reason that from the nature of the Bill it was difficult for Government to introduce it themselves. Religious questions were involved and obviously it was only a private member who could bring a Bill of this nature before the House. Government have tried to give all their co-operation in making this Bill as workable and suitable as possible, and in this connection I would like to take this opportunity of publicly expressing the thanks of Government, and I think on behalf of this House and the Moslem community to the Sir Zahid Suhrawardy Committee for their labour of love in assisting this House in drafting this Bill. I know personally that all the members of that committee worked very hard and I feel it my duty to especially mention the name of Justice Amir Ali who actually first suggested the appointment of an expert committee to Government and advised us to form a committee with Sir Zahid Suhrawardy as President, and he himself undertook to act a Secretary to the committee.

I am grateful to the members of this House for the personal reference made to me. I am afraid my personal contribution is very small, and I would like to say in the language of the late Sir P. C.

Mitter that our contribution is the result of the collective wisdom of Government. I would like to mention with gratitude the assistance we have received from Mr. Wilkinson, the Education Secretary. Several members have also referred to it. The amount of work that he had to do with practically three Bills and the large amount of opinions was really enormous. The House and the members of the Select Committee will no doubt admit that it was largely due to him that our work has been made so easy. I think it is my duty to acknowledge with gratitude the assistance we have received from the Legislative Department, both from Mr. Hooper and Mr. Williams, and his assistants who helped us with their legal knowledge in drafting the amendments. We ought also to express our gratitude to you, Sir, for the courtesy and, kindness you have shown during the discussion of the Bill and especially in allowing us to move so many short notice amendments which were necessary owing to the difficult nature of the Bill.

In conclusion, I would again like to congratulate the Member in charge of the Bill, because I think it was a real demand of the Moslem community. Everybody felt that there should be a Bill, but, except Maulvi Abul Kasem, nobody before this succeeded in producing something that could be taken up by this House. I hope God will give him reward for this Act by which the entire Moslem community and the province as a whole will benefit.

The motion was then put and agreed to.

(The Council was then adjourned for 15 minutes.)

(After adjournmeht.)

The Estates Partition (Amendment) Bill, 1933.

Babu KISHORI MOHAN CHAUDHURI: Before I move my motion, Sir, with your permission I beg to make some changes in the personnel of the Committee, because some of the members were not present and so their consent could not be obtained. My present proposal is that in place of Mr. G. G. Hooper, Mr. J. N. Gupta, Rai Bahadur Keshab Chandra Banerji and Raja Bahadur Bhupendra Narayan Sinha, of Nashipur, the following names be substituted, namely, Mr. A. deC. Williams, Mr. O. M. Martin, Babu Satish Chandra Ray Chowdhury and Nawab Musharruf Hosain, Khan Bahadur, respectively.

Mr. PRESIDENT: All right, you may do so.

Babu KISHORI MOHAN CHAUDHURI: I beg to move that the Estates Partition (Amendment) Bill, 1933, be referred to a Select Committee consisting of—

(*1*) the Hon'ble Member in charge of the Revenue Department,
(*2*) Mr. A. deC. Williams,
(*3*) Mr. O. M. Martin,
(*4*) Khan Bahadur Muhammad Abdul Momin,
(*5*) Babu Satish Chandra Ray Chowdhury,
(*6*) Nawab Musharruf Hosain, Khan Bahadur,
(*7*) Babu Hem Chandra Roy Choudhuri,
(*8*) Maulvi Hassan Ali,
(*9*) Mr. Shanti Shekhareswar Ray,
(*10*) Haji Badi Ahmed Chowdhury, and
(*11*) myself,

with instruction to submit their report as soon as possible and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

At this stage I need not say all about the matter. It is a simple question. The real difficulty is being felt by some of the landlords, especially in the matter of the partition of their estates. Recently we had such an experience in Rajshahi. Some four *tauzi mahals* had to be partitioned. I had to take the leading part in that matter and it took us about 15 or 16 years to complete that partition. The estates extended over 4 districts and 1,500 to 1,600 villages of which the *lakheraj* lands could not be partitioned in about 200 to 300 villages and the small co-sharers have been put to great difficulties in realising cesses from their tenants and regularly paying them to Government. It was under these circumstances that I brought this measure before the House, and I hope it will now be referred to a Select Committee as proposed by me.

Mr. SARAT KUMAR ROY: I oppose the motion, Sir, and with your permission I beg to move a short notice amendment to the following effect:—

"That the Estates Partition (Amendment) Bill, 1933, be recirculated for eliciting public opinion thereon by the 31st May next."

Babu KISHORI MOHAN CHAUDHURI: I accept the amendment, Sir.

The motion of Mr. Sarat Kumar Roy was put and agreed to.

The Bengal State Lotteries Bill, 1933.

Mr. P. BANERJI: I have tabled a short notice amendment and with your permission would like to move that as I have not obtained the consent of some of them, I will omit the names of six members originally mentioned by me, *viz.*, Mr. D. Gladding, Mr. B. R. Sen, Maulvi Muhammad Fazlullah, Babu Jatindra Nath Basu and Mr. Ananda Mohan Poddar, and add the six following names in their places: Dr. Naresh Chandra Sen Gupta, Maulvi Hassan Ali, Kazi Emdadul Hoque, Mr. R. Maiti, Dr. Amulya Ratan Ghose and Babu Amulyadhan Ray.

Mr. PRESIDENT: Yes, you have my permission to do so.

Mr. P. BANERJI: I accordingly beg to move that the Bengal State Lotteries Bill, 1933, be referred to a Select Committee consisting of—

(*1*) the Hon'ble Member in charge of the Finance Department,
(*2*) Dr. Naresh Chandra Sen Gupta,
(*3*) Mr. R. Maiti,
(*4*) Mr. W. L. Armstrong,
(*5*) Mr. D. J. Cohen,
(*6*) Mr. E. T. McCluskie,
(*7*) Babu Jitendralal Bannerjee,
(*8*) Khan Bahadur Maulvi Muhammad Abdul Momin,,
(*9*) Mr. H. S. Suhrawardy,
(*10*) Maulvi Hassan Ali,
(*11*) Maulvi Abul Kasem,
(*12*) Mr. Narendra Kumar Basu,
(*13*) Kazi Emdadul Hoque,
(*14*) Munindra Deb Rai Mahasai,
(*15*) Mr. Mukunda Behary Mullick,
(*16*) Mr. P. N. Guha,
(*17*) Maharaja Sris Chandra Nandy, of Kasimbazar,
(*18*) Babu Khetter Mohan Ray,
(*19*) Mr. Shanti Shekhareswar Ray,
(*20*) Mr. Saileswar Singh Roy,
(*21*) Mr. A. F. M. Abdur-Rahman,
(*22*) Maulvi Tamizuddin Khan,

(23) Maulvi Abdul Ghani Chowdhury,
(24) Mr. Syamaprosad Mookerjee,
(25) Haji Badi Ahmed Chowdhury,
(26) Dr. Amulya Ratan Ghose,
(27) Babu Satish Chandra Ray Chowdhury,
(28) Khan Bahadur Maulvi Azizul Haque,
(29) Seth Hanuman Prosad Poddar,
(30) Babu Amulyadhan Ray, and
(31) the mover,

with instruction to submit their report by the 15th March, 1934, and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

In moving this motion for referring this Bill to a Select Committee, I would first of all refer to the speech of the Hon'ble the Finance Member at the time when he sent the Bill to circulation for public opinion, and in a way Government assured this House that if the public opinion was found to be sufficiently in favour of this Bill, Government would consider the question of changing their past policy. I now therefore appeal to the Hon'ble Member and say that the opinions received are in my favour. I now, therefore, appeal to the Hon'ble Member to consider that the opinion is all in my favour. I might point out to him that out of the 226 opinions that have been received 206 opinions are in my favour, while 18 are against: some of these opinions are also in my favour to some extent in that they have suggested that, if this Bill is passed into law, then the question of primary education will be solved. I must admit, however, that there are two opinions which are neutral, and one of them is that of the Calcutta Turf Club. They have expressed no opinion whatsoever. This is the position, Sir. But, in spite of this, I fondly hope that Government would support me, and my measure which has received such favourable treatment in the hands of the most important bodies. I would add once more that the number of bodies, etc., which favourably commented on my measure are in an overwhelming majority. I do not think that anyone can cite any other measure which has received so much warm support at the hands of the public.

Sir, when I introduced the Bill the Hon'ble Member spoke of two points and he laid considerable emphasis on them. One was that it would increase gambling in the country and the Government were not prepared to see the spirit of gambling increased in the province and thus make the country more immoral. That was one argument on which the Hon'ble Member took his stand. The other point was the economic ground. So far as I remember, Sir, he considered that

from the economic point of view gambling cannot find the light of the day. I submit, Sir, that it is no argument to say that if my Bill is passed it will increase idleness, that it will increase poverty and dissipation and also bring ruin to the country. Sir, the Hon'ble Member misunderstood the whole situation. While talking of lotteries he was really thinking of gambling. Everyone knows, Sir, what happens in the case of gambling. I might remind the House that, when I introduced the Bill, I pointed out that in gambling many families are ruined: there is no denying of that. But what I want to emphasise upon is that lotteries do not bring in their train such miseries as gambling. I would request the Hon'ble Member to give us any instance where any family has been ruined or where there has been any case of suicide or death from any other cause: nothing whatsoever has ever happened. In gambling there are frequently chances of such things happening. Sir, I tried to point out, at the time of the introduction of my Bill, that lottery is not akin to gambling in any sense whatsoever. The Hon'ble Member pointed out at that time that even so there was an element of chance or luck and he, therefore, thought that it fell within the category of gambling. Sir, might I ask whether it is immoral if we take into consideration the element of chance? I consider that the opinion of Mr. Armstrong is very sound. I consider, that he is the right type of Englishman. (Hear, hear.) In spite of the Government opposition, in spite of the opposition of Mr. Thompson, leader of the European group, on the last occasion, I feel that Mr. Armstrong had the courage of conviction, characteristic of his race, and that what he thought right he said like a true Briton.

The Hon'ble Member, in his speech on the last occasion, referred to Europe and specially to England. I am sorry to find that Mr. Thompson repeated parrotlike the same arguments. I would now ask Mr. Thompson and other members of his party to consider this question in all its aspects calmly and not to be hustled or guided by any kind of bias.

Sir, I should like to take the House back to the time when the Gambling Act was passed, viz., in 1808, and that it continued till 1823. These points I discussed very fully at the time of introducing the Bill. Therefore, I need not repeat them to-day here. I submit that, in my scheme, there is no element of gambling whatsoever. It is not *roulette*: it is not *baccarat*: it is not *chemin-de-fer*: it is not *chemin-de-baccarat*: it is not *trant-et-quarant*: it is neither of these. These are the different kinds of gambling that take place all over the world, England even not being excepted, though it is done there in secret. Of course, some of my friends are not aware of the state which prevails in European countries, but I hope members of the European group are well aware of them. When I say this I do not mean any disrespect to any European country, but at the same time I must confess

that I feel that there is a gambling spirit in every man and woman in Europe. But what is the position in this country? Let us consider the case of England: I can say without any hesitation or fear of contradiction that we are averse to gambling. Are my countrymen not more honest when I say that the spirit of gambling is absent in them? Are they not straightforward? Therefore, it stands to reason that because a certain person or a country has gambling instinct in it, it does not follow that they are immoral than those people of the countries that have no gambling instinct. In order to support this contention of mine, I must quote, with your permission, from the speeches which were recently delivered in the House of Lords. The House of Lords while discussing the new Betting Bill on the 30th of November, 1933, listened to the speeches delivered by the Duke of Atholl, the Duke of Sutherland, and the Duke of Montrose, who all supported the Bill. The injustice and hypocrisy in Britain's lottery law were denounced by the Duke of Atholl. He spoke after the Duke of Sutherland had asked the Government whether they would consider a change in the law in regard to sweepstakes. "We were making ourselves the laughing stock of the European," said the Duke of Atholl, "for while the Government's attitude was entire disapproval of betting, certain forms were legalised and the Government even drew revenue from them." He added that there was a great deal to be said on both sides, but there were two things which he ventured to think were wholly contrary to British character and British tradition —first, injustice; secondly, hypocrisy. Both these traits were exhibited to an inordinate extent in the present position on the subjects of betting and gambling, including lotteries and sweepstakes. By injustice he was referring to the discrimination between individuals which the law, as it stood, made. In more popular language there was one law for the rich and another for the poor. Anyone who was fortunate enough to possess a banking account could back a horse in any race, and settle with his bookmaker in due course. On the other hand, the servant of that same man who wanted to hand in his shilling for the purpose of backing the same horse in the same race could not do so without breaking the law. As regards hypocrisy, totalisators had been introduced, and the Government even drew revenue from them. All that the present law did was to stop any honest open effort in this country. In the meantime, we were faced with the edifying spectacle of the British bull-dog, not merely failing to defend his own kennel, but meekly handing over its bone at the bark of an Irish wolf-hound.

Sir, that is the position in England, but while I say that gambling goes on merrily in almost all countries—and even in this country it takes place very close to our house—(A VOICE: "Where"?) MR. P. BANERJI: "On the race course"), people talk hypocritical cant when

they hold up their hands in holy horror at the idea of lotteries. Sir, Their Graces the Duke of Atholl, the Duke of Sutherland and the Duke of Montrose all said most emphatically that there must not be any hypocrisy about the Betting Bill. I would appeal to-day to the European members of this House to forget all hypocritical cants ("Hear, hear") and follow the example of a true Englishman like Mr. Armstrong. Sir, Mr. Armstrong in his speech delivered previously quoted the opinions of many people in high position. Therefore, I do not understand what objection there could be in having lotteries. I have said sufficiently to prove that there could be no objection whatsoever. I submit, Sir, that if lotteries were run on proper lines, there would be no ruination, no poverty, no family debacle. Admitting for argument's sake that some people will get the chance of clearing say, several lakhs by putting in Rs. 10 for a lottery, I do not think that is a matter which can upset the social order. I fully agree that the element of chance already exists there, but we must not forget that our lives are also mere chances as Mr. Armstrong put it so aptly. Now take the question of England two years ago, when there was an attempt to legalise lotteries because the Irish Sweepstake was taking away large sums of money from England. That was the objection, but really Ireland has declared war on England, and it was the general intention not to buy anything from Ireland. The House of Lords prevented the purchase of tickets. If you allow these things, and do not have your own lottery in England, then you allow money to go out of England. That would be a test. Why not do the same thing here, and put a stop to the drain of money from our own country. We know it is going on, but we have to shut our eyes to it. The Hon'ble Member knows very well how many lakhs of rupees go out of this country for this purpose. It is his duty to examine the real state of affairs, and not to be guided by logic or abstract matters, but by real facts. He will again quote from the Royal Commission on Gambling as he did on the previous occasion. The hospitals in England stated that they would not take any money from sweepstakes, that is the reason why nobody would think of sweepstakes. The reason was that in England more than fifteen million pounds come to the aid of hospitals as voluntary contributions in England. May I inquire of our members here what is the voluntary contribution towards hospitals in this country? I can give you the figures quoted by the Finance Member; it is so low that many of the hospitals are in a very bad way. The only contribution is that given by Government. There are so many charitable dispensaries in the hospital at Bhowanipore; the Sambhu Nath Pundit Hospital has ceased to exist; they exist in name only as charitable dispensaries, and yet many of the patients who come to these hospitals have to pay for medicines. That is the position. In some dispensaries they have to pay two pice or one anna every day; there are some exceptions. They are poor people coming from the

mufassal. This is my personal experience; if any member cares to come with me, I can show him. The Government have great difficulty in meeting this state of affairs because there is no help coming, and there are no funds. There is a deficit of 2½ crores, and the deficit will be greater still; the deficit is rising year by year. You know that malaria and other fell diseases are ravaging the country, but no help is coming from Government. Things are absolutely hopeless. You should think over these matters before you criticise. From an humanitarian point of view I would request you to consider these things. Admitting that all this means a chance, but at the same time I would point out that apart from that, we have to consider what will be the comparative good derived from this. One member said that in order to raise more money, there will be a good deal of expense. Well, I give you an assurance that if Government will permit this lottery, I am prepared to guarantee one crore of rupees to Government funds to help these hospitals. I don't say that in order to raise one crore five crores was necessary. Of course advertisement will be necessary. Take the Turf Club Sweepstake, for example. We all know that in 1929 they gave 3 prizes of 16 lakhs; the first prize was Rs. 5,50,000, so they raised Rs. 1,52,00,000. Of course, due to depression and other causes, the prize has been reduced; the collection was smaller; the Turf Club took 10 *per cent.*, and 10 *per cent.* is quite sufficient. So if the Government will start a lottery, it will cost say 10 *per cent.*, and that is not excessive. The same is done in England in respect of football; every week this system is carried on at 2*s.* a ticket; they are not given any tickets, the money comes through the post office; they get certificates from the post office. That is why the collection is heavy; it is done even in small villages; every place in England. They have this chance through football; they cannot afford to go to Races. (A VOICE: "But this is illegal.") I am speaking not from any theological or philosophical point of view, but from a practical point of view. This is a way of collecting the money; it can be done through the post office, and it can be done at a very reasonable cost. It may be only about 2½ *per cent.* or at most 5 *per cent.*; therefore, it cannot be said that this will be an expensive method of raising money. Therefore, I submit to you that there is nothing immoral in this; you must look at it from a practical point of view. What objection is there to legalising these lotteries? It is only fair that we should do it because of the present state of things. It will prevent lakhs of rupees going out of the country. The Hon'ble Finance Member admits that the financial state of affairs is bad; if that is so, why not adopt this practical form of relief. You can do it in the same way that the Turf Club do it. Why, one of the officers in this Council, I mean one of the reporters, won one lakh of rupees from a sweepstake in Calcutta——(The member here reached his time-limit, but was allowed to continue.) Government has to face the fact that gambling

exists, lotteries exist; why not legalise them? Government admit that they are unable to give any relief, so why refuse this method? They cannot meet the expenses of the maintenance of hospitals, and the poor are suffering; this is a way out. Government passed the Education Bill, but it is a dead letter owing to lack of money. I would suggest that we face facts and do the best we can to raise money. It has been said that during the war an abnormal situation arose, and money was raised somehow; the same abnormal situation exists now; there is a deficit from year to year, and it is getting larger. It is quite meet and proper, and from a moral and humanitarian standpoint, this proposal should be accepted. These abnormal circumstances must be taken into consideration.

Mr. PRESIDENT: I shall now take up the motion for recirculation of Reverend B. A. Nag.

Reverend B. A. NAG: May I speak on this motion rather than on my own motion. I do not want to move my amendment, but I would like to speak on this one.

Mr. PRESIDENT: You should first make up your mind as to what you wish to do.

Reverend B. A. NAG: I have made up my mind to oppose this, and not move my motion.

Mr. PRESIDENT: But Mr. Thompson rose to speak on this motion before you got up. I called out your name as I thought you would move your own amendment. Since you are not going to do that, you may, perhaps, wait.

Mr. W. H. THOMPSON: Mr. Banerji having spoken for the right type of Englishman and given you his opinion, it is quite natural that you, Sir, as an impartial Chairman, should give the wrong type the next opportunity to speak. We, Sir, the representatives of British industrial interests in this House are very definitely opposed to the whole idea of this Bill. Every good economist disapproves of lotteries, and our reasons for disapproving them are the reasons of political economy. A lottery is made up of a great number of small subscriptions, usually at a definite figure, say, Rs. 10, paid by a very large number of people in the form of tickets. Most of these people are comparatively poor people. They are people to whom Rs. 10 is Rs. 10. A lottery is made up of a great number of small luxuries; they get full value for it, but the lottery is won by one successful person who scoops the pool. Immediately he has won, his whole idea of the value of money is altered. Each of the ten-rupee

notes which he wins is very much less in value to him than to the man who took it from his earnings for the month and bought a ticket. Not only does he not realise the value of the money that he has won, but actually when he spends it, he gets very much less value for it than the man would have got if he had kept it and spent it in his own way. The total amount of money which passes through the lottery may remain unchanged, but the total usefulness of that money and therefore its total real value is very much reduced by the transaction which takes place. Through the lottery there has been a dissipation of real wealth. That is a plain, practical, straightforward, economic argument against lotteries, and it is the argument which I will place before you to-day. I will not say anything about the demoralising effect of lotteries, though that is very real. When one sees the sort of things that happens in some Latin countries where lotteries are common, one easily realises the demoralising effect of them. Particularly, I am told is it noticeable in the Republics of Central and South America and especially in Cuba where the prevalence of lotteries has contributed materially to the state of unrest which now exists there. Lotteries, wherever they are prevalent, are a steady drain on the wealth of the poor, and they usually result in the demoralisation of the poor who become rich. That is what lotteries are. The hon'ble member who fathers this Bill describes the very good uses which would be made of the money which will come out of them. We have considered this calmly and without bias as the mover of the Bill requested that we should, and we have come to the conclusion that the end does not justify the means.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I am probably one of the few persons in the House who never staked in any lottery. I may say that I was astounded by the eloquent argument of Mr. P. Banerji when he brought forward before me a vision of Bengal with well-equipped hospitals and richly flourishing public institutions, if this Bill were passed. In this I shall follow the good example of Mr. Banerji himself who hates foreign things than anybody else. I will be content with things of my own country, and say that in the East betting and gambling was never permitted. I will quote from the "Mahabharat" and point out that the Great War referred to therein had its origin from gambling in which one party entirely lost everything. That shows that gambling is a thing which should not be permitted under any circumstance. My friend thinks that if we cannot stop an illegal thing, the only course open is to legalise it. I think it is an astounding proposal. Human nature is the same all the world over. Legislators have tried their best to put a stop to illegalities, but yet they have not succeeded. Prophets have come to preach morality in almost every age and yet immoralities are prevalent in this world. Am I to understand that human efforts are to cease

and permit all sorts of things which are prohibited by law? I think it would be demeaning ourselves to legalise a thing which we cannot stop. I remember a case of a gentleman who made a little money by the sale of some old things which he purchased from the Munitions Board. He was earning about Rs. 300 to Rs. 400 a month. On a festival day in one night he lost about Rs. 3,000, and to-day he is a street beggar. Whenever I meet him, I can never forget the evil effects of lottery. I know of another case in which the man concerned is a day labourer. Very often he goes to a gambling den and loses money with the result that his family and children suffer. I know that it is not humanly possible to stop all these things, but surely to permit these things by an Act of the statute is going to far. I feel that my friend is trying to bring forward a dangerous measure with a view to permitting lotteries in this province. His is a sort of confusion in which all the pictures he has held before us are of noble motive. Does the man who really subscribes to the lottery do it for the purpose of subscribing to charitable concerns? I ask my friend to tell us whether the millions of pounds coming to Ireland were contributed for the purpose of charity. No. People were not subscribing to help charitable institutions. The ultimate basis of all gambling is to gamble with luck, and that is a thing which cannot be permitted by any canon of economy. I feel that measures which are wrong by themselves cannot possibly be supported as legal, simply because they will bring in money.

Mr. H. R. NORTON: Mr. President, Sir, in rising to support the motion for sanction to hold lotteries, I cannot say I am absolutely in favour of the Bill in its present form. I am quite prepared to vote for it to go to a Select Committee.

I can imagine Government strongly protesting against lotteries, but they must admit the crying need in Bengal for money for hospitals. The Finance Member has placed before us a deplorable budget, and the amount allotted to hospitals is still more deplorable, yet Government will not look over a brick wall and permit themselves to see what is on the other side, *viz.*, a large sum of money that can be got quite easily without suffering on anyone's part for hospitals.

No doubt Government will quote you the English opinion on sweeps, but this is not England; there they do not urgently need to raise money by sweeps, for England abounds with philanthropists who monthly and yearly devote large sums to hospitals; how otherwise could these institutions carry on? Certainly not by Government grants, and there is still a feeling that sweeps should be held, but the English Government are afraid for many of the hospitals would not accept money raised this way, as they fear they would lose those wonderful bequests which amount to millions per annum.

Now, gentlemen, can you by any rhyme or reason call the situation the same in India? No you cannot; I have been in India 25 years, and I fail to find, when I pick up my daily papers, large donations, or bequests in wills for hospitals. I do not see the rich of India helping their poorer brethren to get well. I do not see large subscriptions from rich people who can well afford it, when certain appeals are sent out, but I do admit large donations and bequests for education. So it will have to be the poor to help the poor.

Now, there is no doubt money is required and it has got to be raised. You will hear against sweep methods that it is an expensive way of raising money. I do not agree with that argument, as everyone who buys a sweep ticket is well aware that a certain amount is deducted for charity and overhead expenses, and in spite of it, they are willing to take that chance.

Another argument will be: You are encouraging the poor to gamble. I say you are not. They gamble now and always will. Has the betting tax stopped gambling? Definitely no. Then why not let those who are willing to buy sweep tickets knowing full well that at least 25 *per cent.* of it is for charity, buy them?

Another argument against sweeps will be overheads. Surely, these could be cut down to a minimum. There need be no large salaried officials; there will naturally be required an office, clerks, etc., but a committee of officials and non-officials of Calcutta would, I feel sure, willingly supervise for nothing in the name of charity; also there will be no need to blazon forth the draw with people all dressed up as the Irish Free State do. No, the argument against heavy overheads will fall to the ground, if Government will sanction the sweeps.

Another argument is the broadcasting of the tickets all over the world. There will be no need to do that; India has a large enough population to support its own sweeps, and I do not propose that books of tickets containing free chances be distributed *ad lib.* I propose that all applications and money be sent to the registered offices; all I ask is—small announcements in various papers that tickets are obtainable under those conditions.

Another argument will be that the sweep can only be a success through blatant advertisements proclaiming large prizes. That is not my idea at all. I would propose as many units as possible and as many prizes as possible, starting the first prize not at £30,000, but one lakh of rupees, and even on this basis of prizes, I am sure the sweep will be a success.

Now the question arises what would hospitals benefit by these sweeps. Surely in a vast place like India, a minimum of a million tickets could be easily disposed of at, say Rs. 5, that is, 5 million rupees; 25 *per cent.* of that for charity would mean 1¼ millions, overheads say 10 *per cent.*,

and the balance distributed in prizes. Therefore, think of the money available if three sweeps per year is held—a minimum of 34½ lakhs.

But the point is, Government will not help us; they have taken up the attitude of "No Sweeps" at any price, in spite of any argument that may be produced in favour of them.

I appeal to them that as an experiment, to sanction, say, three sweeps to be held next year, one on the Grand National, one on the Derby and one on the Viceroy's Cup and then to make their final decision after these have been held and Government to make it clearly understood that it is purely a temporary sanction and that no requests for other lotteries to be held will be considered.

With these few remarks, gentlemen, I ask you to support the Bill to go to a Select Committee so that a Bill can be evolved that will even be approved of by our benign Government.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Very briefly I wish to make our position clear in this matter. While we are willing to and do appreciate the good intentions of the sponsor of this Bill and while we also realise that perhaps by the institution of these lotteries, some public institutions may benefit, we on this side of the House are precluded from giving our sanction to such a proposal as this. According to the "Quoran" it is definitely forbidden that any Musalman should take any part in any game of chance. I would remind my friend the Nawab Sahib that it is definitely mentioned in the "Quoran" that "intoxicants and game of chance" are absolutely forbidden to a Moslem. (Here he quoted some Arabic verses according to the text.) Wine, pork, and "maisar" (which is a game of chance) and everything else into which there enters an element of chance are in the same position. Therefore, however good the intention of Mr. Banerji may be, or whatever the effect, material or economical, of such things as lotteries may be, we cannot give our sanction to a legislation which will legalise a thing definitely forbidden in the "Quoran," and therefore I am afraid that we shall have to oppose it, though with very great regret.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I rise to support the motion of my friend Mr. P. Banerji. Here my friend Mr. Momin has quoted the "Quoran" and said that lottery is a game of chance and is prohibited, but I know—I can give you the translation of the "Quoran" here, especially referring to this matter. The "Quoran" says: "The devil wants to sow dissension and discord in your midst by means of intoxicants and games of chance and to keep you away from prayer. Will you not desist?" Now, Sir, that game of chance is a continuous affair. It does not mean spending money after something just for once. It is a continuous action going on from hour

to hour, day to day and year to year. So if my friend thinks that by merely subscribing to a lottery he is actually committing some sin, I can tell him that he probably is not right. The question of religion, Sir, should not be preached in this connection. So far as that part of the "Quoran" is concerned, I am perfectly certain that the interpretation is "continuous action," and I will explain to my friend Khan Bahadur Azizul Haque who advises me now to drink every day, about this proposal later on. What I submit to the whole House is to picture to your mind's eye the present condition of Bengal. The financial condition of Bengal is such that probably the Hon'ble Finance Member will have to admit that for the pressing necessity of the Government itself he will have to borrow 2¼ crores from the Government of India, and if we ask him to contribute even Rs. 50,000 for giving some relief to those who actually go to hospitals, to those indigent people who cannot afford to have some medicine in their own house, who go there just to save their life, he will at once say "No, your financial position is absolutely unsound, and I am not prepared to pay you even five rupees out of my ordinary fund." That being the position, Sir, is it justifiable now, when a member of the old Swaraj Party, which will lead Bengal in future, which will form the future Bengal Government, has come forward with a distinct proposal to raise money from my countrymen as well as from outside to help the poor indigent people who go to hospital for the purpose of getting, say, just a morsel of food and a small quantity of medicine, to keep themselves alive and to get rid of their diseases? Why is it that we are asking for a lottery? Sir, I am labouring that point. The fact is that in our religion it is said that we can take all sorts of prohibited food if we are really in utter distress. (Cries of "No, no; it is not so.") I say, yes; when we are in utter distress as regards finance, when my hon'ble friend, Mr. Woodhead, cannot even spend Rs. 5 out of his ordinary finance for the relief of distress and of the suffering poor in hospitals. Suppose we get some money by way of lottery. What objection can there be? The position is this: The country, especially the hospitals, have no fund. A lot of people who used to subscribe to hospitals cannot subscribe now (interruptions). Don't interrupt me; it is a very serious proposition and those who do not live in the *mufassal* do not know what is happening there, especially in hospitals; they are absolutely without any fund. They have to reduce ration that is given to the poor sufferers; that is the real picture of all *mufassal* hospitals which I believe is not known to many of our friends who, like Mr. Thompson, are rolling in wealth. If under such circumstances we suggest or anybody else suggests that we should raise some money for giving relief to all the sufferers, why should an objection come forward from the Finance Member who cannot at all help us in this difficulty. The difficulty is there and the suffering is there, the patients are there who are practically without

any food or medicine. Your hospitals cannot give any assistance to patients whom they have got to turn out, so to say, because there is no room and because you cannot supply medicine to them: that is the picture which I present for the serious consideration of all the people who are rolling in luxury and in wealth. That being the position, Sir, I would appeal to all of you to seriously consider before you go and place your vote with the Hon'ble Member, who will be opposing this proposal, what is it against which you are really voting. Some of these people are in favour of raising money by means of lotteries, inasmuch as such money could be utilised for relieving the suffering of the masses who are undergoing untold miseries and whose primary needs are not attended to. This is the one point which I should like to place before the House. As regards the other points, I would appeal most earnestly to Englishmen—(A VOICE: "Not all members of this House are Englishmen; a goodly number of them are Scotsmen.")—at any rate they are Britons—and to Irishmen. I do not know whether they will support this just cause. If an Englishman supports this Bill, I shall have nothing but admiration for him. But as regards the Irishman—nowadays everything Irish is considered to be bad. I hope that he will not have any scruple in supporting this measure, inasmuch as his own country runs lotteries for the benefit of hospitals. This idea of having sweepstakes may not be liked by my English friends, because there is a quarrel now between England and the Free State. I am very glad to see that an Englishman—I mean Mr. Armstrong—has supported this measure. (A VOICE: "No, he is Scotch." NAWAB MUSHARRUF HOSAIN, KHAN BAHADUR: "We all consider them to be English.") (There were protests from the European members who cried "No, no.")

Sir, I consider that we should view this measure dispassionately, and if any good is accruing to the Irish people by State lotteries, I do not see any reason why the same benefit should not result in our case also.

Then somebody has said, Sir, that it is not moral. I am not speaking of my friend Mr. Momin. I think it was Mr. Thompson who raised the question of morality and that my friend Khan Bahadur Maulvi Azizul Haque followed suit. I do not understand how a man can be dubbed as immoral if he tries to help the poor, the indigent sufferers in the *mufassal*—those who are dying from want of food and medicine—and I might add also from want of sufficient clothing. Those who live in the *mufassal* can fully testify that it is a matter of every day occurrence that people are dying from want of medical aid or any kind of medical service. If we can save one single life even, then I think that we should congratulate ourselves in having done a

highly moral act. So from that point of view it cannot be held that this measure is an immoral one, and that the principle underlying it is an immoral proposition.

Then comes the legal question, *viz.*, the loss to the persons who will subscribe to and support these lotteries. Sir those who can afford to pay Rs. 5——

(The member having reached the time-limit, resumed his seat.)

(The Council adjourned for 15 minutes.)

(After adjournment.)

Mr. W. L. ARMSTRONG: Mr. President, Sir, in spite of the very fine eulogies which Mr. Banerji has showered upon me, I am afraid that I shall have to qualify my support to his Bill. In the first place, Sir, on the principle that we should have State lotteries for hospitals, I am prepared to support the present motion for referring the Bill to a Select Committee for that purpose. Apart from that, I must confess that, in spite of all the enthusiasm that has been exhibited by some members on the floor of this House, I am afraid that my attitude towards this question has been misunderstood. There is no doubt that some confusion has been created in the minds of some of the members of this House. It is true that I supported the principle of State lotteries, but I should like to make it clear that I am not in favour—indeed I am strongly against it—of running lotteries as a means of raising money for public finance. The reason is, Sir, that I feel that it is bad finance. I know that all good economists are against this. But we are faced with the position that we in Bengal have a totally inadequate number of badly organised, badly furnished, and badly equipped hospitals. Now, Sir, I feel that I should override the principles of political economy, which stand in my way, when I find that the sick and the suffering people can be relieved if lotteries were run. I would ask the hon'ble members of this House to consider which is the greater sin—the sin of organising lotteries for relieving distress and misery, or the sin of leaving people to undergo physical and mental agony. I am sorry to find, Sir, that Mr. Banerji wants to provide for the improvement of public health, sanitation, hospitals, agriculture, and industries in Bengal, but he has not included police charities as one of the objects of the Bill. It is, perhaps, because he thinks that the objects which he has mentioned can only be supported by charities. While he is anxious to provide for hospitals, etc., he is not at all interested in solving the unemployment question. If the district boards and the municipalities are to be allowed to run sweepstakes, then I do not see how Government can have State lotteries which will bring them sufficient money to help the hospitals, because

nothing much will be left over. There will indeed be overlapping of efforts and confusion. Now, the Hon'ble Mr. Woodhead very kindly lent me a book from which he quoted extracts when the matter was raised first. I suppose the Hon'ble Mr. Woodhead is convinced that State lotteries are not desirable not only from the point of view of public finance, but also from that of morality. But I should like to point out to him what the Royal Commission on Lotteries and Betting (1932-33) say in paragraph 452 of their report. It is as follows: "In the first place, if the existing State machinery were to be employed for the purpose (and we are aware of no special difficulty in the matter), the lottery could be conducted with low administrative costs. The tickets could be purchased at any post-office at a small overhead charge. If at any time it were desired to put an end to the lottery, no large private vested interests would have been created.

Secondly, the proceeds of the lottery would be paid over to the Exchequer, and there would be no dispute as to the rival claims of charitable organisations to a share in the proceeds.

The importance of these advantages will be appreciated when we consider the difficulties which arise in regard to other types of large public lotteries."

So, it cannot be considered that lotteries have got to be run at prohibitive costs. Now, when we consider the fact that lotteries have got to be run, I think that this can be done at a very low cost. What is the present position? When we take into consideration the fact that at the present moment Government are not prepared to sanction lotteries for hospitals, as in the case of the Irish Free State, we find that we shall be depriving the hospitals of Bengal of considerable amounts. In the year 1930, 1,014 British hospitals received more than £15,500,000. There is no reason why the 114 hospitals of Bengal, which are badly equipped in comparison with British hospitals, should not benefit in a similar manner. If it is the idea that men who become suddenly rich through unexpected windfalls should be prevented from enjoying the benefits accruing therefrom so that they might lead a moral life, then why not abolish legacies? At the present time, what we are asking for is not that the get-rich-quick mentality should be fostered, but we are plumping for a sane and ordered organisation for benefiting hospitals. I ask, Sir, why this cannot be done in a properly moral and a good serviceable way. So I support the principle of the Bill. Lotteries on the scale and the lines which I have mentioned would bring in more money than small lotteries run in a haphazard manner. Sir, supposing that two or three large lotteries are run on the lines I have enunciated, it would confer untold benefits on the province. Let Bengal lead the way. There was a time when Bengal led the way, and,

if I might quote a distinguished statesman and son of India, I would recall to this House his famous dictum—"What Bengal thinks to-day, the rest of India will think to-morrow."

Mr. NARENDRA KUMAR BASU: Mr. President, Sir, I rise to give my wholehearted support to the motion that the Bill be referred to a Select Committee. Sir, my reasons for supporting the motion are in the main the same as those which have been given expression to by Mr. Armstrong. I do not agree to the details of the Bill, *viz.*, that it would be conducive to the interests of Bengal as a whole or would serve the interests of lotteries themselves, if all district boards, municipalities, and other institutions were permitted to have lotteries on their own account. But so far as State lotteries are concerned, I submit, Sir, that it is too late in the day for anybody to shut his eyes to the facts prevailing in the province, and to say that we should not have lotteries at all. Sir, do we not see every day in the newspapers, especially the great Anglo-Indian newspaper, the *Statesman*, notices of these sweepstakes? Do we not see that for many charitable purposes, not excluding the purpose of the protection of children and other things, sweepstakes are being held? Do we not see when coming to the Council, and going home right under our eyes, a notice about the Fete at Belvedere, advertising sweepstakes and what not? And we saw only the other day one of the most respected members of our society, the Hon'ble Mr. Justice M. N. Mukerji, himself won a prize in a sweepstake; that was advertised in the *Statesman*. I am glad that he won this because he handed it over to me. It is no use saying that lotteries are not held in the country. Of course, I do not say that we ought to permit gambling in this country, but as a matter of fact lotteries are being held all over the country, and if the money spent on lotteries and more could be diverted to a good use, I do not see that we ought to object to such a state of things. Sir, it has been stated in opposition to the Bill by the leader of the European group that the demoralisation resulting from lotteries is immense. I pricked up my ears to hear what he was saying, and heard him say that the demoralisation was not of the people who pay for the lottery tickets, but it was the demoralisation of those who won the lottery prizes. If this great province can have its hospitals in good running condition even at the expense of the demoralisation of three or four men every year, I do not think that is a result very much to be regretted. I am not speaking of the religious objections of my friend Khan Bahadur Abdul Momin. He may have objections to taking tickets in lotteries, but I would like to know from my friend Nawab Musharruf Hosain whether lotteries are not permitted by the "Quoran." I would like to know whether the "Quoran" would say that it was incumbent upon Muhammadans to oppose all lotteries for all people? There was nothing doing, so far as Khan Bahadur Momin was concerned; he would not take a ticket, though he forgets

that all life is a chance. Whether it be official life or political life, we are taking a chance in life's lottery. I am not talking of this chance, but I am inclined to agree with Nawab Sahib that betting as a whole is prohibited in the "Quoran." Do we not know that His Highness the Aga Khan who is the head of one of the sects of the Mussalman community, is himself a race horse owner, and I say with all respect to His Highness, that he indulges in racing and in betting, and I am sure Khan Bahadur Momin will not forget that for all political purposes, His Highness is as great a leader of his as of the particular community of which he is the spiritual head. My friend Khan Bahadur Azizul Haque was talking of "*Mahabharat*," and of the *Kuru* and *Pandavas*. I know he is a Sanskrit scholar; he took honours in Sanskrit for the B.A. Examination. I believe, I am not myself a Sanskrit scholar, but I submit that gambling with dice and taking tickets in lotteries are two entirely different things. It is idle to say that taking a ticket in an annual or semi-annual lottery is the same as gambling with dice and cards. I am quite sure—not to speak of the British group—I am sure almost every intelligent man plays card games almost every evening of their lives. I do not know whether the Finance Member does so, because he is always a busy man, but so far as the British members of this House are concerned, and so far as a vast majority of the Indian members are concerned, they have at least occasionally, if not regularly, played cards. But that is an absolutely different proposition from taking a ticket in a lottery. As the previous speaker and his supporters have pointed out, our hospitals are starved for want of money, and if you can find the money without much difficulty, without causing much individual hardship if that be so, and if there is even an element of chance thrown in, by which one or two men can benefit, I do not see any reason why this proposal should not be accepted. Lotteries are being held all over the country, every day and every week, not to speak of the sweepstake of the Royal Calcutta Turf Club, but the Government not only ignores them, but encourages them. The Government takes a share of their profits, not in tickets but in taxes. I am very glad there are these sweepstakes, because I once won one of the prizes of the Bengal Flying Club, and I am quite sure, and Mr. Thompson will agree, that I was not demoralised by it. I think it is absolutely incorrect to say that winning a prise in a lottery is necessarily demoralising. I support this motion.

The Hon'ble Mr. J. A. WOODHEAD: I rise, as all members of the House no doubt realise, to oppose this Bill. I have, Sir, on two previous occasions explained the attitude of Government towards lotteries as a means of raising revenue whether for public or charitable purposes. That attitude is the same to-day as it has been for many years. Government is of opinion that lotteries are definitely mischievous and should not be used for the purpose of raising money either

for public or charitable purposes. And although it is evident from the speeches of those who have spoken this evening that everybody knows the arguments I shall use, I am afraid I shall have to repeat them once again.

The first objection to lotteries arises from their evil social effects, and the larger and the more numerous the lotteries the greater are those evil effects. A lottery is nothing but a gamble. Several speakers have tried to maintain that buying a ticket in a lottery is not gambling. I have been pressed to avoid hypocrisy. I will try to avoid hypocrisy, and I will try to look facts in the face. But I still maintain that buying a ticket in a lottery is certainly gambling. A person can buy one ticket or a number of tickets; an individual is not limited to the purchase of one ticket, he can buy as many as he likes. Buying a ticket or tickets is gambling, because the purchaser spends a small amount in the hope that he will gain a fortune; that is exactly what you do when you put money on a horse at the races. A person puts Rs. 5, Rs. 10 or Rs. 20, whatever it may be, on a horse and hopes to get back hundreds. That is gambling and that is exactly the position as regards a lottery, *i.e.*, he pays say Rs. 10 and hopes to get a lakh of rupees or even more. Further, there is no easier form of gambling. All you have to do is to buy a ticket and hope for the best. No estimate has to be made of the chances of any particular ticket winning a prize, because each ticket has the same infinitesimal chance of winning. That, Sir, is the chief objection to public lotteries. They encourage, they seek to obtain revenue by encouraging gambling. A reference has been made to the betting tax, and I think one hon'ble member said that the betting tax encourages gambling. That, Sir, is not so; on the contrary if anything, it discourages gambling, because it reduces the amount the gambler obtains if he wins his bet. Again a lottery, if it is to be a real success, must be a large one. All large lotteries must depend for their success on advertisement and if not widely advertised will never be successful. Further, success depends upon the offer of large money prizes. In fact, people are encouraged to buy tickets by extensive advertisements offering large prizes and unfortunately tickets are bought by many people who cannot afford to spare the money. They spend money on buying lottery tickets which they could use better otherwise, much better for the purpose of buying clothes and other necessities of life. Take for instance, a clerk on Rs. 50. Is it suggested that he can afford to pay Rs. 10 for a lottery ticket? Can he not use that Rs. 10 better by spending it for other purposes? If Mr. P. Banerji would only look at the gentleman who buys a ticket instead of at the large sum of money he hopes to raise by a lottery, I feel sure he would agree that it would be unwise for Government to encourage a clerk on Rs. 50 to buy a ticket for Rs. 10; for that is what you do if you advertise a lottery. Those, Sir, are I

think the greatest objections to lotteries. Camouflage it as you will, stress as you will, the revenue you hope to raise by lotteries, the revenue is raised by appealing to and encouraging the gambling instincts of the population, instincts which are so frequently productive of the greatest misery, and which, I am sure, everybody will agree, Government should endeavour to repress and not to develop.

Again, as I have said on previous occasions, a lottery is a most expensive way of raising money, and I will illustrate this by reference to the Irish Sweepstakes. And in this matter I am not in any way deterred by Mr. Armstrong's quotation from the Report of the Royal Commission on Gambling, that a State lottery can be run, so far as management expenses are concerned, more cheaply than a private lottery. As a matter of fact, the Irish Sweepstakes did not entail heavy management expenses; those expenses did not amount to more than 5 *per cent.* of the total amount received in cash. I will take the year 1932 as my example. During that year the total amount subscribed in cash to the Irish Sweepstakes was £11¼ millions and the surplus, including stamp duty, was just over £2¾ millions, that is three-fourths of the total amount subscribed was absorbed by prizes and expenses. Translated into rupees, this means that in order to raise one lakh of rupees for public purposes, it is necessary to take four lakhs out of the pockets of the people. To get one rupee for public purpose you take four rupees out of the tax-payers' pockets. Sir, I can think of no more uneconomical way of raising money. I would ask the House to ponder very carefully over those figures. They certainly give food for thought.

There is a further point which, I think, was stressed by Mr. Thompson; it is this: A lottery involves the collection of small sums from numerous members of the public and the distribution of large prizes to the lucky few. I am surprised that Mr. P. Banerji supports a measure of this kind. I believe he is interested in the working man; he is certainly closely connected with the Bus Syndicate. And I find it difficult, therefore, to realise why he supports a system which takes small sums out of the pockets of thousands of people, usually poor people, and transfers the greater part of the total sum so realized not to the public treasury, but to the lucky few. That seems to me to be a system which it is extraordinarily difficult to defend. Here, again, I will illustrate my point by reference to the figures of the Irish Sweepstakes. In 1932, out of £11¼ millions collected in cash, the amount distributed in prizes was over £7½ millions, which means that two-thirds of the total amount collected was distributed to the fortunate few. Surely, it is difficult to defend a system of taxation which in order to raise, say, one lakh of revenue, requires the tax-payer to be squeezed to the extent of four lakhs and out of the balance of three lakhs distributes over 2½ lakhs to a small number of individuals chosen

by lot. It has been suggested that I should look on the other side of the wall. My retort is that I refuse to look on the other side until I am satisfied that all is well on this side. I believe that even Nawab Musharruf Hosain would, in other circumstances, not be so impressed with the object for which the money is to be raised. Suppose, for instance, if instead of taking the money from a large number of individuals, mostly poor, it were suggested that his tea-gardens should be taken over for the purpose of providing money for the Jalpaiguri Hospital, I feel sure he would refuse to look on what has been described as the other side of the wall. Time is running short and I do propose to deal with the matter at great length, but I hope I have been able to convince the House that examined in the cold light of reason a system of raising revenue by lotteries is thoroughly bad. Surely, a system which depends for its success upon the exploitation of the gambling instinct—the desire to get something for nothing—which out of every four rupees of the gross amount collected in small sums from an army of contributors produces only one rupee of revenue, and which out of every such four rupees transfers 2½ rupees from the pockets of the many to the pockets of the fortunate few stands self-condemned. I recognise that lotteries' admirers and many have lent their support to the lottery system, but are not their eyes blinded by the great need for money and the apparent ease with which large sums have been realised by State lotteries? We do need money; I do not deny that our hospitals need money, and I shall be the first to welcome any sound method by which their finances can be improved; but surely that is not a reason why we should adopt a radically bad system of raising revenue. And to those who are impressed by the ease with which large sums have been raised, I would say—the easy way is often the bad way, and the lottery way is no exception to that rule.

The Bill contemplates not only lotteries run directly by the State but lotteries run by local authorities and associations under a system of permits. There are many objections to such a system; objections which have been stressed even by some of those who spoke in support of the motion for reference to a Select Committee. A system of permits would result in a perfect orgy of lotteries; there would be hundreds of lotteries. Having given a permit for one lottery, it would certainly be impossible to refuse a permit for another.

I now turn to the opinions that have been received. It is, perhaps, interesting to note that they have been referred to by only one speaker, Mr. Banerji. He said that 226 opinions had been received of which 206 supported the Bill. The only observation which I would make in this connection is that about 100 of those opinions which came from places so far apart as Dacca, Khulna, Jessore and Calcutta were word for word exactly the same. Who wrote the letter to which these persons attached their signatures? I cannot say, but it is certainly somewhat a strange coincidence that one letter has been signed by

people who live so far apart as Calcutta, Khulna, Dacca and Jessore. I have nothing further to say. My appeal to the House is not to support a measure for raising revenue which is radically unsound, because by that measure you hope to obtain a certain amount of money for a public or quasi-public purpose.

Mr. SHANTI SHEKHARESWAR RAY: Sir, may I suggest that further opportunity should be given to us to speak on this motion as it is a very important matter?

Mr. PRESIDENT: There is hardly any time to do so.

Mr. SHANTI SHEKHARESWAR RAY: In that case it might perhaps be carried over to the next session.

Mr. PRESIDENT: I do not think I can agree to that. I think I should put the motion at once, unless the mover wishes to exercise his right of reply.

Mr. P. BANERJI: Sir, the Hon'ble Member in opposing my motion has put forward the same old argument which has been refuted more than once. Cogent reasons have been given by all sections of the House. Unfortunately, when Government want to oppose a measure, automatically all the members of Government oppose it. Although Government fully realise that there is need of money and that they are bankrupt and cannot do justice to the hospitals, yet they mislead us by confusing the issues. The Hon'ble Member has been quoting from a book which has been very ably refuted by both Messrs. Norton and Armstrong and also other members from this side of the House. The Hon'ble Member has referred to me as representing labour in this House. Admitting that I do so and fight for labour, may I inquire if Government have done anything to remove the social evils which affect the labour? We find liquor shops in labour areas where the labourers can go whenever they like. Is that the way by which Government want to improve the lot of the labouring class? By frequenting these liquor shops the labourers become impoverished. The money, however, thus obtained goes to the coffers of Government. I think it is hypocrisy to say that lotteries would have a demoralising effect on the public. By betting on the race courses, thousands of people are becoming ruined. Nobody can deny that fact. It is, in my opinion, the worst form of gambling. In the lotteries tickets of different prices may be sold to suit the pockets of different classes of persons. Therefore, it cannot be argued that the

public will spend a lot of money. It would be most illogical to say that lottery is as worse as gambling. Sir, what is economy? Economists have said that we must earn money; but the interpretation that has now been laid upon this is that you must earn that money by the sweat of your brow, and not by chance. Well, Sir, may I inquire what is the position here? We see people here sitting on Government Benches not doing much work but merely enjoying luxury. If you get some people translated from this side of the benches, they at once earn Rs. 64,000 a year, whereas the labourers, 85 per cent. of whom are toiling hard day and night, are not getting even a morsel of food as a result of their labour. Sir, the price of jute has gone down by almost 50 *per cent.* and people, although they are toiling day and night, are not getting anything to eat. Do Government ever come to their rescue? No. They have allowed gambling in the form of the race course: but even leaving that aside, what is a stock exchange and what is a *phatka* market, again, for the matter of that? They are going on merrily with gambling, and lottery is actually going on there. The Turf Club, Sir, in one year collected 132 lakhs and gave away 48 lakhs as first prize and 90 *per cent.* of the money was given away in other prizes. The Hon'ble Member says that in order to raise five crores you have to raise four crores, so that you get the benefit of only one crore; whereas he himself said previously that it would be one to five, he has now come down one point and it is now one to four. But even on that basis if we spend 25 lakhs, we get back 3,75 lakhs; that is the position. I have pointed out and other members have also pointed out that if Government wants to do it they can easily do it at 2½ *per cent.* only. Sir, I have calculated these things very thoroughly and even more thoroughly perhaps than the Hon'ble Member himself. I can challenge him and give him facts and figures which would convince him that this can be done at 2½ *per cent.* Whatever the Hon'ble Member has said to-day, I say, Sir, is absolutely misleading, and if he has been pleased to call my scheme mischievous I say, Sir, the guilt is rather on the other side. Then, what a fine argument has been given by the Hon'ble Member in regard to the signatures, namely, how persons living in different places can sign one and the same letter. Sir, it is a wonderful piece of argument. It is not at all impossible to do so. I might tell you, Sir, that the persons who signed this letter are gentlemen of unimpeachable position. One is Babu Upendra Lal Mazumdar, lately the Accountant-General of Madras or of Burma, and the other is Mr. Sheo Kissen Bhatta, an Alderman of the Calcutta Corporation, who is the Managing Director of one of the biggest jute mills in the world. There are other respectable men also. That is the position, Sir. In this way Hindus, Christians and even Muhammadan Mollahs have signed this letter. Of course, I have not studied the "Quoran" myself, as I do not know Arabic,

but I have seen a translation of it, and it has also been explained to me, and from this I can say that the interpretation that Khan Bahadur Momin has given is a wrong interpretation of the "Quoran." The Mollahs who have signed this letter have themselves said that a lottery is not against the *Shariat*. Yes; yes I know that; don't interrupt me; this is the opinion of gentlemen who have studied the "Quoran" and know the "Quoran" thoroughly and not the opinion of Anglicised Mussalmans. Sir, many races of people live in this country and it is their opinion that in the interest of people Government should do their legitimate duty to them in this crisis. In one Government report I found that in the district of Jessore about 2 lakhs of people have died of malaria, and if you go into details you will find that Bengal is a dying race; that is why you find, Sir, that Southern Calcutta is rapidly spreading, because people cannot live in the villages on account of malaria and come to live in Calcutta. For want of funds also Government cannot do anything. I may also tell the House that Italy turned out malaria by means of lottery. Khan Bahadur Momin might know of irrigation schemes which may do away with malaria, but he does not know perhaps what the Irish Free State have done for its hospitals by means of their State lottery. Look at France. France, too, has been able to balance their budget in 1933 by starting a State lottery. A reference arose in the House of Lords on the question whether France was less moral than England by starting a State lottery. Under these circumstances and considering all the facts before us, it is surprising that the Hon'ble Finance Member who cannot himself do anything should pursue a "dog in the manger" policy; he would not do anything himself nor let others do anything, but on the contrary would call others' schemes mischievous. Sir, only just now we have passed the Wakf Bill, but I beg to say, Sir, that this measure is a better measure than the Wakf Bill. And the question of "Quoran" should not be brought in the way; since the Wakf Bill was passed with the aid of Hindu members, I should have expected some more help from my Muhammadan friends. As regards the signature, I still maintain, Sir, that even if we leave out the letter which has been referred to by the Hon'ble Member, I have got opinions from all the municipalities and district boards, namely, 100 opinions in my favour as against the only 18, which disfavour a State lottery. That is the whole position. Therefore, practically the whole rural population and also the urban population, municipalities and district boards have supported my proposal. In spite of the assurance of the Hon'ble Member on the previous occasion that the Bill will be considered if the opinions received were favourable, I find the Hon'ble Finance Member going out in search of members of the opposition to throw out my motion. I may tell the Hon'ble Member that there is still time to mend and time to change his opinion, and as he has come down by one degree

from the last year, it will take him some years to come to our position. Without meaning any disrespect to the Hon'ble Member, I might say that I have studied the statistics on the subject with great care and I can also say, in spite of his quotation from great economists, that I also have done so——

(The member having reached the time-limit resumed his seat.)

Mr. PRESIDENT: I would divide the motion into two parts. I would leave aside the personnel for the time being and only put the first part, namely, that the Bengal State Lotteries' Bill, 1933, be referred to a Select Committee.

The above motion was put and a division taken with the following result:—

AYES.

Ali, Mr. Altaf.
Armstrong, Mr. W. L.
Banerji, Mr. P.
Barman, Babu Premhari.
Basu, Mr. Narendra Kumar.
Bhaudhuri, Dr. Jogendra Chandra.
Chaudhuri, Babu Nikhori Mohan.
Choudhury, Maulvi Nurul Absar.
Fazlullah, Maulvi Muhammad.
Hussain, Nawab Musharraf, Khan Bahadur.
Mallik, Mr. R.
Mittra, Babu Sarat Chandra.
Poddar, Seth Hanuman Prasad.
Ray, Babu Nagendra Narayan.
Ray, Mr. Shanti Shekhareswar.
Sen Gupta, Dr. Naresh Chandra.
Singh, Srijut Taj Bahadur.

NOES.

Ashworth, Mr. S. H.
Bal, Babu Lalit Kumar.
Birkmyre, Mr. H.
Bose, Mr. S. M.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Ahmuzzaman.
Choudhury, Maulvi Abdul Ghani.
Cohen, Mr. H. J.
Dutt, Mr. S. S.
Dutt, Rai Bahadur Dr. Haridhan.
Edgley, Mr. R. S. A.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. E.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdulkarim, of Dilduar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Mr. P. N.
Haque, Khan Bahadur Maulvi Asimul.
Hogg, Mr. G. P.
Hussain, Maulvi Muhammad.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Mr. Ranner Rahman.
Khan, Maulvi Tamizuddin.
Martin, Mr. O. M.
Mason, Mr. R. A.
Miller, Mr. G. C.
Miller, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Nag, Reverend R. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Quasem, Maulvi Abul.
Raheem, Mr. A.
Rahman, Mr. A. F. M. Abdur.
Ray, Babu Amulyadhan.
Ray, Babu Khetter Mohan.
Ray Choudhury, Mr. K. C.
Ray Choudhury, Babu Satish Chandra.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. C. N.
Roy Choudhuri, Babu Nem Chandra.
Sahana, Babu Satya Kinkar.
Sarker, Rai Bahadur Rohini Mohan.
Sen, Rai Saheb Akshoy Kumar.

Sen, Mr. B. R.
Stewart, Mr. J. W. R.
Townend, Mr. H. P. V.
Walker, Mr. W. A. H.

Wilkinson, Mr. H. R.
Williams, Mr. A. deS.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 17 and the "Noes" 55, the motion was lost.

Mr. PRESIDENT: The second part of the motion does not arise.

Adjournment.

The House was then adjourned till 3 p.m. on Monday, the 26th February, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

* THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Monday, the 26th February, 1934, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 87 nominated and elected members.

Oath or affirmation.

The following member made an oath or affirmation of his allegiance to the Crown:—

Khan Bahadur Maulvi Emaduddin Ahmed.

STARRED QUESTIONS

(to which oral answers were given)

Landlord fee for the holding transferred by parts before and after the Bengal Tenancy Act, 1928.

*88. **Srijut TAJ BAHADUR SINGH:** Will the Hon'ble Member in charge of the Revenue Department be pleased to state whether any executive rule has been framed or any definite procedure laid down, if there is no such provision in the Tenancy Act itself, to enable a landlord to realize his landlord fee for the portion of a holding which was transferred before the Bengal Tenancy Act, 1928, the other portion having been transferred after the Act of 1928, thus completing the transfer of the entire holding?

MEMBER in charge of REVENUE DEPARTMENT (the Hon'ble Sir Charu Chunder Ghose): No such provision exists in the Act and no such rule has been framed.

Rai Bahadur KESHAB CHANDRA BANERJI: Will the Hon'ble Member be pleased to state whether he is aware of the difficulties now being experienced by landlords in this matter?

The Hon'ble Sir CHARU CHUNDER GHOSE: Not in this particular mater; but we should be very glad if the hon'ble member would write to the Revenue Secretary and then anything that is brought to his notice will receive our careful consideration.

Kaliganj steamer service.

***89. Maulvi NUR RAHMAN KHAN EUSUFJI:** (*a*) Is the Hon'ble Member in charge of the Marine Department aware that the passengers suffer much inconvenience owing to the fact that the steamers employed in the Goalundo-Bahadurabad line, known as the Kaliganj service, are of very slow speed and have insufficient accommodation?

(*b*) Is the Hon'ble Member also aware that, owing to the removal of the steamer station at Serajganj to a distance of about 2 miles from the original site and other attendant inconveniences, the up-steamer passengers very often stand in danger of missing the Calcutta night train at Serajganj?

(*c*) If the answers to (*a*) and (*b*) are in the affirmative, are the Government considering the desirability of urging upon the steamer company to provide for swift-running steamers in the aforesaid line?

MEMBER in charge of MARINE DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*a*) The Joint Companies report that the steamers now employed on the Goalundo-Bahadurabad line are the same steamers as have maintained the service for a number of years. They are reported to have more than ample accommodation for passengers and goods offering.

(*b*) The present steamer station at Serajganj is the nearest site to the town and rail station at which the vessels of the companies can call.

(*c*) No.

Maulvi SYED MAJID BAKSH: Will the Hon'ble Member be pleased to give us the information asked for in (*a*) whether the steamers employed are slow or fast running ones?

The Hon'ble Mr. J. A. Woodhead: I am afraid I do not understand what the hon'ble member precisely means by the expression "slow or fast running steamers." I may say that I have no knowledge of the speed of the steamers.

Maulvi SYED MAJID BAKSH: Might I inquire whether the steamers employed have got sufficient speed so that they may reach Serajganj in time to catch the railway train?

The Hon'ble Mr. J. A. WOODHEAD: I believe so, Sir.

Transhipment at Serajganj Ghat.

*30. **Maulvi NUR RAHMAN KHAN EUSUFJI:** (*a*) Is the Hon'ble Member in charge of the Marine Department aware—

(*i*) that the river near the Serajganj steamer station is very shallow;

(*ii*) that the up and the down steamers remain at a distance of about 20 minutes' journey from the steamer ghat; and

(*iii*) that in consequence thereof the passengers have got to be transhipped for being carried to the steamer ghat; and

(*iv*) that for their transhipment very small and oldfashioned steamers having no electric lights and affording insufficient accommodation are used?

(*b*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of urging upon the steamer company for the employment of up-to-date steamers for the purpose of transhipment near the steamer station at Serajganj?

The Hon'ble Mr. J. A. WOODHEAD: (*a*) (*i*) The river is reported to have silted heavily.

(*ii*) The up and down steamers are reported to be unable to berth nearer the steamer ghat than they do.

(*iii*) Passengers are transhipped by a small shallow-draft steamer.

(*iv*) Larger steamers cannot be employed on this transhipment on account of the shallow water. The steamer used has no electric light but has sufficient accommodation for the traffic offering.

(*b*) No.

Maulvi SYED MAJID BAKSH: Will the Hon'ble Member be pleased to state as to what steps Government are taking to cope with the situation?

The Hon'ble Mr. J. A. WOODHEAD: Government have taken no steps.

Transfer of khas mahal lands from the Mymensingh to the Pabna Collectorate.

*91. **Maulvi NUR RAHMAN KHAN EUSUFJI:** (*a*) Is the Hon'ble Member in charge of the Revenue Department aware that a portion of the Government khas mahal lands situated within the *Char* area of the Tangail subdivision has been transferred recently from the Mymensingh to the Pabna Collectorate?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state what are the reasons for the said transfer?

(*c*) Is the Hon'ble Member aware that the aforesaid transfer has caused a good deal of hardship and inconvenience to the people of the transferred areas in going to the headquarters for litigation and other purposes in connection with their properties?

(*d*) Are the Government considering the desirability of modifying their decision in the matter?

The Hon'ble Sir CHARU CHUNDER GHOSE: (*a*) Yes.

(*b*) Economy and efficiency of administration.

(*c*) and (*d*) No.

Maulvi ABDUL KARIM: With reference to (*c*), will the Hon'ble Member be pleased to inquire whether the transfer has really caused a good deal of hardship and inconvenience to the people concerned?

The Hon'ble Sir CHARU CHUNDER GHOSE: We are informed by the local officers that it has not.

UNSTARRED QUESTIONS

(to which answers were laid on the table)

Distress of agriculturists in the Bankura district.

42. **Babu SATYA KINKAR SAHANA:** (*a*) Is the Hon'ble Minister in charge of the Agriculture and Industries Department aware—

(*i*) that owing to the canker pest the paddy crop in the Bankura district is not half of the normal this year; and

(*ii*) that the meagre yield of the main crop and the abnormally low price level of paddy have already been creating some distress for the agriculturists and causing apprehension of more distress in the next summer?

(*b*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of calling for reports and taking steps to prevent a calamity?

MINISTER in charge of AGRICULTURE AND INDUSTRIES DEPARTMENT (the Hon'ble Nawab K. G. M. Faroqui, Khan Bahadur): (*a*) (*i*) The sanker pest appeared to a considerable extent in certain lowlying areas in the district, particularly in the Vishnupur subdivision and in Chhatna and Raipur police-stations in the Sadar subdivision, in which there was water-logging owing to heavy rainfall. It is reported that the expected yield in those areas was reduced by about 50 *per cent*.

On the other hand, the rains proved very favourable to the crop on the middle lands, *i.e.*, lands neither very high nor very low. On the whole the outturn of the crop in the district was normal.

(*ii*) The agriculturists are certainly in some difficulty. This is reported to be due, not to meagre yield of the rice crop, but to the low price of paddy. There is at present no distress nor is there any apprehension of distress during next summer on account of shortage of foodstuff.

(*b*) The question does not arise.

Ashanulla School of Engineering, Dacca.

43. Maulvi ABDUL GHANI CHOWDHURY: Will the Hon'ble Minister in charge of the Education Department be pleased to state—

(*i*) the period for which the junior and the senior members of the *mistry* staff of the Ahsanulla School of Engineering were governed by the same rules and regulations;

(*ii*) whether any application was made by the senior staff to the Director of Public Instruction in 1933; and

(*iii*) if so, whether any action has yet been taken upon the same?

MINISTER in charge of EDUCATION DEPARTMENT (the Hon'ble Mr. Khwaja Nazimuddin): (*i*) All the *mistries* have been governed by the same rules since their appointment.

(*ii*) The *mistries* who were not made permanent made an application in 1933.

(*iii*) The whole question of the position and conditions of service of the *mistry* staff is under the consideration of the Director of Public Instruction.

Rai Bahadur KESHAB CHANDRA BANERJI: Will the Hon'ble Minister be pleased to tell us as to when action will be taken on the representation of the *mistries*?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: I would refer the hon'ble member to the answer given in (*iii*).

Rai Bahadur KESHAB CHANDRA BANERJI: Might I inquire when final action is likely to be taken by Government on this question?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: When we have arrived at some definite conclusion on the subject.

Appointment of scheduled caste candidates in the Dacca Collectorate.

44. Babu AMULYA DHAN RAY: (*a*) Will the Hon'ble Member in charge of the Revenue Department be pleased to lay on the table a statement showing, for the offices under the Collector of Dacca,—

(*i*) the total number of permanent clerks;

(*ii*) the total number of temporary clerks;

(*iii*) how many of these two classes of clerks were recruited—

(*1*) in the current year, and

(*2*) during the last three years;

(*iv*) how many of these new appointments referred to in (*iii*) were given to the inhabitants of—

(*1*) Dacca, and

(*2*) other districts; and

(*v*) how many of these appointments were given to the candidates of the scheduled castes?

(*b*) Will the Hon'ble Member be pleased to state the percentage of appointments in the Dacca Collectorate held by the members of the scheduled castes?

The Hon'ble Sir CHARU CHUNDER GHOSE: (*a*) (*i*) 172 (on 1st January, 1934).

(*ii*) 32.

(*iii*) (*1*) 10 permanent and 8 temporary.

(*2*) 19 permanent and 13 temporary.

(*iv*) (*1*) 19 permanent and 12 temporary.

(*2*) 10 permanent and 9 temporary.

(*v*) 2.

(*b*) 4·65 permanent and 3·12 temporary.

Rai Sahib SARAT CHANDRA BAL: Will the Hon'ble Member be pleased to state whether he has got a list of scheduled castes?

The Hon'ble Sir CHARU CHUNDER GHOSE: I should like to have notice of this question.

Babu AMULYADHAN RAY: Will the Hon'ble Member be pleased to state whether he is aware of a circular issued by the Appointment Department on the 20th April, 1931, and, if so, whether that circular has been strictly followed in this particular instance?

The Hon'ble Sir CHARU CHUNDER GHOSE: The answer is that the circular has been followed.

Rai Sahib SARAT CHANDRA BAL: With reference to (*b*), might I know as to how the Hon'ble Member came to this calculation?

The Hon'ble Sir CHARU CHUNDER GHOSE: All I can say is that the instructions have been issued and we are not aware that these instructions have not been followed.

Rai Sahib SARAT CHANDRA BAL: Might I know how the Hon'ble Member came to this calculation of 4·65 permanent and 3·12 temporary without having a list of the scheduled castes?

The Hon'ble Sir CHARU CHUNDER GHOSE: There is a list of backward castes and in our circular letter, dated 20th April, 1931, that list is appended and from the papers at our disposal we are of opinion that in no instance have the orders of Government been disregarded.

Mr. PRESIDENT: But the question was how did you arrive at the figures you have given?

The Hon'ble Sir CHARU CHUNDER GHOSE: The Collectors have supplied these figures having regard to the list of backward classes and having regard to the instructions which have been communicated to them.

Mr. SHANTI SHEKHARESWAR RAY: Is there any distinction between scheduled castes and backward class?

The Hon'ble Sir CHARU CHUNDER GHOSE: There is a distinction.

Babu JITENDRALAL BANNERJEE: Apart from the backward class, is Government now ready with the revised list of scheduled castes?

The Hon'ble Sir CHARU CHUNDER GHOSE: It does not concern the Revenue Department. It is a matter for the Appointment Department to say whether there is any revised list or not.

Babu JITENDRALAL BANNERJEE: Does it not concern the Government as a whole?

The Hon'ble Mr. R. N. REID: The matter has not yet been finally decided.

Babu JITENDRALAL BANNERJEE: When is the decision expected to be arrived at with reference to backward classes and scheduled castes?

The Hon'ble Sir CHARU CHUNDER GHOSE: I want notice of that question.

Babu AMULYADHAN RAY: Will the Hon'ble Member be pleased to say whether he has received a return of last year with regard to the ministerial appointments as contemplated in the circular, dated 20th April, 1931.

The Hon'ble Sir CHARU CHUNDER GHOSE: The question is not understood.

NON-OFFICIAL BUSINESS

RESOLUTIONS

(On matters of General Public Interest).

Resolution regarding Military Training for the People of Bengal.

Rai Bahadur KESHAB CHANDRA BANERJI: I beg to move that this Council recommends to the Government to convey to the Government of India and to His Majesty's Secretary of State for India that in the opinion of this Council early steps should be taken for giving military training to the people of Bengal so as to raise a permanent unit to form a part of the Indian Army.

Sir, the resolution seeks to make a very reasonable demand—a demand which is in consonance with the spirit of the times and the

advanced ideas of democracy. Military training presupposes disciplined and constitutional freedom for which the whole country is aspiring. It is a necessary concomittant to political advance. In any scheme of self-government, military training is an essential factor. We should be able to defend our hearths and homes before we are called upon to shoulder administrative responsibilities on democratic lines.

The announcement made by Lord Carmichael of the formation of a Double Company in his Durbar speech at Dacca in August, 1916, was hailed with delight by the people of Bengal and it was expected that the 49th Bengali Regiment would be retained as a permanent unit of the Indian Army but its disbandment caused keen disappointment to the people of Bengal although the Regiment had given a good account of itself in Mesopotamia where it received its baptism of fire.

I hope I am voicing the unanimous opinion of this House when I say that without military training we as a nation cannot shoulder real responsibilities in regard to the governance of our country—responsibilities which must come sooner or later and for which we must be fully prepared. It is unfortunate that there has been practically no sustained effort here in Bengal to find, for the Bengalees, a legitimate place in His Majesty's Indian Army. It should be realised that indifference in such a vital matter reflects great discredit on our part as well as on the part of Government. It will perhaps be remembered that in their magnificent report the Skeen Committee gave an interesting analysis of the character of our boys from the military point of view. They pointed out the defects found in their character. These defects are want of "General aptitude for dealing with and controlling men," a lack of "the power of leadership," of "the spirit of initiative," sportsmanlike character, love of discipline, and above all, lack of "a strong and genuine military spirit such as is essential to training and command of troops." There may be defects in our boys but they are not past remedy. A critical study of the Skeen Committee's report will reveal the fact that these deficiencies are due not to anything inherently wrong in the character of the Indian boys, but to lack of opportunities which have not been given to them to take part in the defence of their country. That the present system of education is responsible for the many defects in our national character will perhaps be universally admitted. The report further says, "In England the educational system has been definitely adapted, in part at any rate, to the production of efficient leaders of men." While in India, Lord Macaulay said on one occasion that the educational policy of the Government has been to train up a class of men to serve as a recruiting field for the supply of meek and docile and obedient subordinates to the British administrators of India. A University degree is considered to be a passport to service. Speaking on problems of higher education in Tanjore on a recent occasion, Sir P. S. Sivaswamy Aiyer said

that education in this country was essentially a job, bringing discipline. Bishop Arundale lecturing at Madras complained of the fundamental rot in it as it failed to produce capable leaders in our public life. Nawab Mehdi Juug Bahadur in his convocation address before the Osmania University laid his finger chiefly on the intellectual wastage and barrenness of the present day educational system. In his candid comments on problems of higher education, Sir Hasan Suhrawardy in his last Calcutta University convocation address broached the more serious practical problems calling for attention from the custodians of University education. Here I would like to repeat what Dr. Moonje said in the Legislative Assembly, "If the policies of educating youths in India and in England have been different, the results also in the evolution of character of the British and the Indian youths must be different."

Sir, the hopeless condition of our young men has impelled me to bring forward this resolution, and if the gentlemen opposite, I mean the Treasury Bench, sympathise with the object of this resolution, there will be no difficulty in passing it as I do not think there is anybody here who will oppose the proposal, which if accepted, will solve a multitude of problems with which the Government is confronted at the present moment. In this connection, I would invite a reference to the remarkable book entitled "The Remaking of Modern Army" by Captain B. H. Laddel Hart, Military critic of the *Daily Telegraph*, in which he deals with the effects of military training on the character of boys. He says, "Military drill in particular has a dual object: first, to instil obedience, self-control, cohesion, quickness and alertness, all of which qualities may be summed up in the phrase "the disciplined activity of the individual," second, "to develop the mobility and flexibility of the units for battle." This means that if military training is imparted to our boys, it will go a great way in removing the defects referred to in the Skeen Committee's Report.

Sir, in moving this resolution I am backed by the opinion of no less a personage than the late Lord Roberts whose authority to speak on a subject like this cannot be questioned. He considerd it his duty in the evening of his life to impress upon his people the fact that his last days could not be better spent than by bringing it to the notice of his people in England that England would not be safe until all the boys were made to go through a system of military training. If that is so, Sir, in respect of England, the argument applies with greater force to this counry. The Government should consider whether or not a country whose military traditions have been broken during more than a century and a half of British rule in India could really be made without military training to take its due share in the defence of the Empire in the event of an emergency arising in future.

Sir, we are clamouring for the introduction of the Dominion form of government in India. It may not come to-morrow but it is bound to come sooner or later, and when it comes let us not feel that we are not prepared to share with the rest of the Indian Army, the responsibilities of national defence under the aegis of the British Crown.

Sir, during the last Great War, the Gurkhas, although pigmies, distinguished themselves and proved their mettle in the Western Front against the surging tide of German invasion. If the Bengalees are given an opportunity, there is every reason to hope that they will turn out as efficient as any other martial race in British India. Sir, in one of the previous sessions of the Indian Legislative Assembly, Mr. S. C. Mitra in supporting the resolution of Mr. Jadav for recruitment of soldiers from Madras, very rightly expressed the sentiments of young Bengal. It is indeed a matter for great regret that the Bengalees should be prevented from taking their rightful share in the country's defence. It is unthinkable that an intelligent race of fifty millions cannot produce ten thousand soldiers to live and die for the defence of their motherland.

Sir, there is another important aspect of the question to which I desire to invite the attention of Government. It was in the last session of the Council that the House disposed of a resolution dealing with unemployment in Bengal. I pointed out in that connection that there were two millions able-bodied unemployed men in this province. It is not meant thereby that a course of military training to our young men will solve the problem of unemployment; but there is no gainsaying the fact that besides giving employment to a number of our trained youths it will make them fit for their avocations in various walks of life. It will remove the false sense of prestige from which the middle-class men of Bengal generally suffer and which is the bane of our society at the present moment. Military training for our young men is not without its political significance. It cannot be denied that the Bengalee youths are bereft of the virtues of disciplined service and co-ordinated action. It is military training that imparts grit and tone to one's national life, otherwise the nation become like a coloured mirror where its soul fails to be reflected in its various activities; they become purposeless and are deflected from the main spring which creates and builds a nation. And the inevitable result is that there is enthusiasm without discipline, emotion without self-restraint and sentiment without the determination for constructive work. It is my belief, rooted in the knowledge of the history of the past, that the youths of our province are running off at a tangent from the course of constructive nationalism because they lack determination and discipline.

Sir, I do not wish to tread on historical grounds to prove that the Bengalees were worthy warriors in days of yore, nor should I touch

upon the diplomatic question, hotly discussed in the past, if the Bengalees should know how to defend their country. My appeal is based on the exigencies of the present, the conditions of to-day warrant the necessity of providing for military training for the youths of our country. It is trust, Sir, which begets trust, and I am sure the youths of my province would gratefully respect the trust if reposed in them. This training would infuse fresh courage, instil new hopes in their minds and inspire them with the real spirit of service to their motherland. It is in that hope for a brighter Bengal that I commend my resolution to the acceptance of the House.

Maulvi TAMIZUDDIN KHAN: Sir, I give my whole-hearted support to the resolution moved by Rai Bahadur Keshab Chandra Banerji. It is a stigma on the fair name of Bengal that Bengalees are not admitted to military training. It is, Sir, I think, too late in the day to say that Bengalees as a race are not fit for military service. The Rai Bahadur has shown from facts and figures that in the past the Bengalees have proved their worth during the last war and if we go beyond that, no one can say that Bengalees were debarred from military service during all times. During pre-British times surely the Bengalees were in military service. Under the Moghul Emperors as well as under Hindu *Rajas* in the past Bengalees were to be seen in military service. (A voice: "India as a whole.") Here we are not speaking of India as a whole but of Bengal alone. There is one interesting thing to be seen in the nomenclatures which many Bengalees—Hindus and Muslims—bear. Amongst Muslims, some have the title of *Barkandaz*—that means a lance-man. That shows that during the Moghul rule, these men were in military service. The term *Bukshi* also denotes a military qualification, so also the term *Jamadar*, and there are various such nomenclatures in Bengal. Amongst the Hindus, amongst the scheduled caste people, there are similar terms, the term *Dhali* (shield man) for instance. There is also one significant fact that amongst the Muslim peasantry, they have got the general title of *Sheikh*—this is not to be found in all parts of India. If we look into the Muslim world, we will find that the title *Sheikh* is an Arab title. It is a quite reasonable theory that many of the Muslim cultivators bearing this name were in the military service under the Moghul Emperors, and with the fall of the Muslim Empire, they had to be disbanded whereupon they took to cultivation as a means of livelihood. Many of them were Arabs and that is why they have to this day retained their old title of *Sheikh*. Otherwise there can be no reason why so many people in Bengal have got the title of *Sheikh*. Whatever that may be, in the warfare of the present day, it is the brain that is of far greater importance than mere physical strength. So far as mere physical qualifications are concerned, Bengalees, specially of the *bhadralok* class, on account of the climatic conditions of the province may be somewhat inferior to upcountry

people. But still amongst the rural people there are able-bodied men who would not be unequal to the requirements of military service once they were enlisted. So far as our young men are concerned, we all know that they have given sufficient proof of their bravery, endurance and the other qualities that are necessary for the making up of good soldiers. The fact remains that if Bengal is going to get self-government, and if Bengal is deprived of taking their proper share in the defence of their country, then that self-government would be meaningless to Bengal. Even if there is some physical deficiency that should be no reason why they should be permanently debarred from entering into military service. Once a man gets into the military service, he is subjected to a rigorous training that will certainly make up for the little deficiency he may have so far as physical qualifications are concerned. I think, therefore, that it is high time that Government should favourably consider this question and secure for Bengal her legitimate demand that has been very aptly and timely made by my friend the Rai Bahadur.

Rai Sahib PANCHANAN BARMA: Mr. President, Sir, I wholeheartedly support this resolution. Bengalees are stated to be of sedate character and not fit for military training or military work. I wholeheartedly contradict that statement. I was myself, during the time of the War, a recruiting agent and I sent about 5 or 6 hundred people from Rangpur and Dinajpur alone. And the report was that those people were as good as any one in the military department. One young man from Dinajpur got a medal and a certificate for distinguished services and a pension of Rs. 8 a month for two lives. After that I recruited some men for the Bengali Territorial Force, which was subsequently dissolved. They also turned out to be good soldiers. As regards candidates for military service, I can assure the House that there will not be any dearth of them. I am in receipt of letters urging me to organise a military force. I may tell the House that our people who inhabit the Goalpara district are in the military service. They went to Burma, they went to the Lushai Hills, to Egypt and many other places where they served very well. Some of them rose to the rank of *Subedar*-Major. Only the other day, during Christmas vacation, I saw a *Subedar* saluting me with full military dress. There are some Matriculates in Goalpara who have recently entered the military service and I have no doubt that they are proving themselves worthy of their selection. I beg to submit that the people of Bengal should be taken into the military service and they should be given military training and they will certainly turn out to be good soldiers or good military men.

MUNINDRA DEB RAI MAHASAI: Mr. President, Sir, I rise in support of the motion just moved by my friend Rai Keshab Chandra Banerji Bahadur. The arguments advanced by him in support of the

motion are, I think, sufficient to convince the Government about the urgency of the measure proposed by him. The reforms would be a mere sham and autonomy a mockery if the defence of the country is not left to the children of the soil. I do not wish to hark back into the hoary history of the past about the military exploits of the Bengalees in bygone days. Given the opportunities and the necessary training the Bengalees are capable of achieving success in the field of battle. This has been amply proved by the exploits of the 49th Bengalees in Mesopotamia during the last Great War. They were put to a severe test in the firing line and they proved the mettle inherent in them. The grit and determination and the courage displayed by them gave ample proof of their fitness to enter the army. While besieged at Kut-el-Amara they cheerfully shared with their comrades-in-arms the privations and sufferings incidental to such a long siege. Wonderful military discipline exhibited by them in the war zone led us naturally to expect that the 49th Bengalee Regiment would be allowed to continue to serve in the army but unfortunately they were disbanded as soon as the War was over. This was a great disappointment to us all. This showed that the Government did not fully trust us. They should remember that trust begets trust. Trust us and it will be reciprocated a thousand times. It is now high time for Government to take stock of the realities of the situation and allow the Bengalees to enter the army. Autonomous Bengal will be meaningless if the doors for entrance into the army are not thrown open to the Bengalees to protect their country from foreign invasion and their hearth and home from internal commotion.

Rai Sahib AKSHOY KUMAR SEN: Sir, while supporting the resolution, I beg to add a few words from my own personal experience. As an Assistant Recruiting Officer, at Faridpur, of the new Indian Territorial Force, I have some experience of the situation. In the year 1923, when the honourable member, now our Chief Secretary, Mr. G. P. Hogg, was District Magistrate and Collector of Faridpur, a Committee was formed for the purpose of recruiting sepoys for the Indian Territorial Force. From that time I have been working as a recruiting officer for that force, and I must say that our the then District Magistrate, Mr. G. P. Hogg, helped us much for the organisation of units for the district there. And out of 700 odd persons who were recruited in the year 1923 for the whole of Bengal, we had the good fortune of recruiting more than 241 sepoys for that force from Faridpur alone. And I must emphasise that this was possible through the assistance and encouragement of Mr. G. P. Hogg. The members of the Territorial Force were given only one month's training and this was afterwards altered to two months' training which is not at all sufficient for the purpose. I must say that most of these recruits come from the Namasudra class who now belong to the scheduled castes, and I know from

the old history of Bengal that these people belonged to the army of the last heroes of Bengal, Pratapaditya of Jessore, and Raja Sitaram Ray of Hariharnagar (Bhusna). Meinahati was the General of Raja Sitaram Ray who belonged to the Namasudra community, and several other men belonging to the caste Hindu community were the Generals of Pratapaditya of Jessore.

This is a matter of history that these Namasudra people with the force of their arms defeated the big Moghul army during the reign of the great Akbar, and Pratapaditya conquered the area up to Raj Mahal within 6 months with the help of these Namasudras and other Bengali people, who had the courage and boldness to fight the Moghul army under the great Akbar. These people, the Namasudras, took to cultivation after they were disbanded when the Bengalee *rajas* lost their kingdom. Now all these facts go to show that the Bengalees, if trained, would become very good soldiers, and great soldiers. I submit, Sir, that trust begets trust. The Hindu soldiers never betrayed their masters whoever they might have been. Neither in the time of Aurangzeb, nor in the time of the last Nawabs of Bengal, have the Hindu soldiers or generals ever betrayed trust. They died for their masters. I submit that the Bengalees, whose past history goes to show that they are capable persons, would be fit soldiers if they get proper training. From my experience I say that those people who were recruited for the Indian Territorial Force on a temporary basis only are clamouring to be taken in permanently. Their past history shows that if the Bengalees are taken as soldiers permanently they will become very nice soldiers and they will be an additional strength to the British army. I submit that this unrest in Bengal is mainly due to bread question, and this question can mostly be solved if a permanent regiment is formed; many unemployed youths will get service in the military department, and the unrest will mostly go. That is my humble opinion. I appeal to the members of this House, that this resolution which has been moved by my friend Rai Bahadur Keshab Chandra Banerji be supported by all.

Maulvi ABDUS SAMAD: I rise to give wholehearted support to this resolution, and I think that in the interests of Government these Bengalee youths should be given an opportunity to get some military training, and if Government accepts this resolution and provides and opens schools and colleges for giving training to Bengalee youths, it will provide a better remedy than the remedy proposed by the Criminal Law Amendment Bill. There are many youths, misguided youths, who take to violence and form conspiracy for committing murders, mostly due to the fact that they have got no occupation whatever. It is said that an idle brain is the devil's workshop. These youths, full of courage, full of vigour, have no occupation, no hope in this world, and therefore they brood under imaginary grievances; they refuse to be subject to foreign rule, and therefore they take to terrorist activity. But if they

are occupied in military work, they will faithfully serve the Government, as has been sufficiently proved by the recruitment during the Great War. Bengalee youths were recruited for service in Mesopotamia and they did good service and could undergo hardships and all the troubles which have to be undergone under military rules by soldiers. So for this reason, I think Government should give serious consideration to this resolution.

The Hon'ble Mr. R. N. REID: Sir, Government do not intend to oppose this resolution. Matters relating to the Army Department are not matters with which the Local Government is entitled to deal, but they will certainly forward the report of this discussion to the proper quarter. The Rai Bahadur who moved this resolution gave us a dissertation on the shortcomings of education in this country, but I am not sure whether that affects the case so much, and he also went on to draw conclusions to illustrate his meaning from the campaign which Lord Roberts carried on in England some years ago before the Great War. Well, that campaign was intended to rouse the youth of Great Britain not to join the Regular Army, which I think is intended in the present resolution, but to join the Volunteer Corps which subsequently became the Territorial Force, and this brings me to this point that Bengalees are not debarred entirely from military service in this country, because there are three units in this province which are open to them. One is the Calcutta Battalion of the University Training Corps, the other is the Territorial Battalion of the 19th Hyderabad Regiment, and the other is the Dacca Company of the University Training Corps. The mover of the resolution referred to the criticisms which were made by certain military authorities of the capacity of Bengalees for military training. Well, their opportunity to disprove this criticism is open to them in the fact that they can join these units to which I have made reference and show that their capacity is far better than the military authorities think it is. Unfortunately the facts show that there is not any great enthusiasm to join these units, except at Dacca. The Dacca Company numbers 76 which is its full strength, but the Calcutta Battalion University Training Corps is a long way below its strength. Its establishment is 663 and in 1933 its strength was 447. It seems to me that the Rai Bahadur might do a lot of good propaganda by inducing youths to join that unit, and to prove their worth as soldiers. There may be good reason why they do not join these corps that I do not know of, but the fact remains that these units are below strength and it seems to me that they are losing the opportunity of showing what they are really worth. I think it would be wrong if I passed over one point in the Rai Bahadur's speech and that was when he described the Gurkhas as pigmies. This is not, I think, a term to use, and it is to say the least of it, somewhat disrespectful, to refer in this way to the Gurkhas who form some of the finest units of the Indian Army

and are the subjects of a great allied country. He referred to them no doubt unintentionally in these terms. I do not wish to detain the House further on this subject. As I said before the results of discussion will be forwarded to the right quarter and Government will have pleasure in doing so.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I had no intention, Sir, of speaking on this resolution, but for the Hon'ble Home Member's speech which has not given us that encouragement which I expected from him. We certainly thank him for the promise he has made that the proceedings will be forwarded to the proper quarter, but I was very anxiously expecting to hear from him, something more than that this Government was simply prepared to forward the discussions, without making any suggestions of their own by way of recommending or otherwise this particular resolution. And that was a thing on which everybody would have liked to have got an assurance. Mr. Reid has incidentally mentioned the University Corps and has asked the Rai Bahadur to make propaganda to get more members enlisted to that corps. We are aware that the University Corps has not got the required strength, but what is intended by this resolution is not to raise a Volunteer Corps but to form a regular part of the army, which is certainly as far as we know, not open to the Bengalees. Volunteering is quite different from taking to military service in the real sense; volunteering does not in any way affect unemployment which is one of the reasons why Bengalees have now become anxious for military service. I would request the Hon'ble Member not only to forward our discussion, but to make a definite recommendation that early steps be taken to establish a definite military unit for Bengalees so that Bengalees of all ranks, not only *bhadraloks*, but all educated people may really participate in this training.

Mr. PRESIDENT: The discussion will be closed, after the hon'ble mover has made his reply.

Mr. P. BANERJI: But you have allowed Khan Bahadur Momin to speak.

Mr. PRESIDENT: What of that? If you have any new contribution to make to the debate, you may speak now.

Mr. P. BANERJI: I have, in my own way, Sir.

Mr. PRESIDENT: Very well.

Mr. P. BANERJI: I only beg to point out that on the 5th August, 1929, there was a resolution in which the Government were defeated, and we carried a resolution by 68 votes to 33. Government opposed compulsory military training in schools and colleges. The Hon'ble Mr. McAlpin in his speech, while opposing that, suggested that it was

difficult for the Government to support a measure like this for two reasons. One reason was that it was compulsory; if it had been voluntary, Government would have had no difficulty; another point was in this question, the usual question is that of finance. That difficulty arose at a time when the Government finances were in a better position. I beg to submit, Sir, that in 1929 in a motion like this the Government found this difficulty, and therefore the Government said that they could not support it. I want to speak for another reason and that is that this is a measure for which the Government is spending a lot of money for recruiting men in the military. Only the other day the Hon'ble Mr. Woodhead pointed out that though there is a deficit in the budget still law and order must be maintained at any cost. Therefore it can be very rightly suggested that if in spite of the deplorable condition of the finance in the province they must spend money and a lot of money on law and order, it would be better for them to raise a unit as proposed in the resolution composed of Bengalees. Members who have supported this resolution have pointed out that this would at least to a certain extent remove the question of unemployment. People from other parts of the country are taken in the military and they take money from Bengal. The question of unemployment remains untouched and unsolved here. It has been pointed out that the military men who are brought from the frontier and the hills oppress the people here and commit many acts of excesses. That may be one of the reasons why, it is felt by the people, the terrorists' activities are increasing. Government ought to strongly recommend this measure. I am sorry, however, that it is not the intention of Government to do so. The Rai Sahib of Faridpur has pointed out that the Hindus never betray trust. Unfortunately, however, the policy of Government to-day is to lay the blame on the *bhadralok* class. That is their attitude. I think that that attitude is ruinous and it is due to that attitude that Government is heading for a crisis. Another fact that has been emphasised is that the 49th Bengalee Regiment has been very successful. In fact they have played their part very well. But instead of that being a qualification it is looked upon as a disqualification by Government. I suggest that Government should immediately change this policy and help in the formation of a unit of Bengalees to form a part of the Indian Army. If that is done, that will reduce the question of unemployment in the province to a minimum. With the words I support the resolution.

Rai Bahadur KESHAB CHANDRA BANERJI: Sir, we are thankful to the Hon'ble Mr. Reid for the sympathetic manner in which he has received this question. As Khan Bahadur Abdul Momin has already pointed out, there is one point which requires to be cleared up. Mere forwarding of a summary of the discussions on this resolution will hardly serve the purpose for which it is intended. If a recommendation, as suggested, is made by the Government of Bengal, it will

strengthen our position and will go a great way towards fulfilling the object with which the resolution has been moved. The Hon'ble the Finance Member, who is unfortunately absent now, stated in his budget speech the other day that the present condition of Bengal's finances is due in a large measure to the subversive political movements, namely, civil disobedience and terrorism. It is true that the political activities of the country are responsible to some extent for the abnormal expenditure of Government in providing additional accommodation for prisoners in the different jails and dealing generally with the menace of terrorism. I can assure Government that if the Bengalees are admitted to military service, there is a great possibility of political unrest appreciably diminishing. The Hon'ble Mr. Reid has referred to the Dacca and Calcutta Universities Training Corps. So far as the Dacca University Corps is concerned, I can say from my personal experience that I had occasion to pay a visit to the corps when the members were in camp in February last year. I found after discussion with them that they were quite happy, they were trusted by the Commanding Officer and they never betrayed that trust. The students who joined the University Training Corps were placed in complete charge of the magazines. There was no suspicion whatever on the part of the military authorities. That is an ample proof of the loyalty of the members of the corps and I am confident that if the Bengalees are trusted, there will be no ground for complaint. I have nothing more to add but to thank the Hon'ble Mr. Reid once more for his remarks and I hope in view of the importance of the question, the Hon'ble Member will kindly forward a summary of the discussions on this resolution with a definite recommendation to the Government of India.

The resolution was then put and agreed to.

Resolution regarding Landlords' Fees.

Mr. SARAT KUMAR ROY: I beg to move that this Council recommends to the Government that early steps be taken to amend the provisions of the Law and the rules thereunder, regarding the transmission and payment of landlords' fees and landlords' transfer fees, as such are inadequate, specially when there is a numerous body of co-sharers who do not join in applying for payment.

Sir, I rise to move the resolution that stands against my name, and in support, I beg to say, that under the Bengal Tenancy Act, upon transfer of subordinate interest, two different classes of fees are payable to landlords, namely, "landlords' fees" and "landlords' transfer fees." The former are payable under sections 12, 13 and 15 of the Act, and the latter are payable under sections 26C and 26D of the Act. The provision for this latter class of fees has been inserted into the Act by the Bengal Tenancy Amendment Act of 1928 (Act IV of 1928 B.C.).

It is significant to note here that much attention is devoted in framing both the laws and the rules governing the realisation and payment of these fees, *viz.*, "landlords' transfer fees." Sir, I am thankful to the Hon'ble the late Revenue Member that recently some very happy alterations have been made in the rules regarding payment of this class of fees to co-sharer landlords (*vide* Notification No. 13044 L.R., dated 13th November, 1933). But I regret to say that while the rules have been modified in connection with these fees, nothing has yet been done to simplify the payment of "landlords' fees"; and one of the objects of my present resolution is to draw the attention of the Government to this inequitable mode of dealings.

Sir, to make my proposition clear, I think I may be permitted to digress a little on the details of the rules on this subject, though I shall try to be at brief as possible.

Under the law and the rules made thereunder, these fees, I mean either the "landlords' fees" or the landlords' transfer fees," the cost of transmission thereof to the landlords and process fees for service of notices of such transfer to the landlords together with notices, have all to be paid and filed respectively in the Registration office at the time of registration of each document.

The Registrar then sends them on to the Collector, for service of notice and for payment of the fees to the landlords concerned.

Where there is a sole landlord or where co-sharer landlords have appointed a common manager, under section 99A of the Act, generally no difficulty arises. But in the case of co-sharer landlords who do not appoint such common manager, much difficulty arises and the Collector does not send the money by money-order. The landlords must apply for payment. In this, section 26C (proviso) entitles a co-sharer landlord to apply for his share of the "landlords' transfer fees" in deposit separately. But I do not find any provision, either in the Act or in the rules, to enable a co-sharer or a number of them to apply for his or their share of the "landlords' fees" separately.

Under the existing law, all the co-sharers must jointly apply and grant a joint receipt for the money in deposit.

Now, Sir, difficulty of an insuperable nature arises in this system.

In the first place, the amount of fee in deposit being usually very small, say a rupee or two only, in each case of transfer, the costs involved in applying before the Collector for payment is prohibitive.

In the next place, it is not found expedient for a number of co-sharer landlords to join together and make the application for payment of small sums of money in deposit in each case. In many cases, owing to disputes, such a task becomes almost impracticable, irrespective of the prohibitive costs involved.

This is a defect in the Bengal Tenancy Act, in consequence of which although individual loss may be negligibly small, the total loss to the landlords as a community amounts to thousands of rupees and every year claims aggregating such big sums are being forfeited.

Hence it is suggested that the law should be modified by inserting a provision for the purpose, namely, to allow a co-sharer landlord or any number of them to apply for payment of his or their share of "the landlords' fees" separately, in the same manner as they are entitled to do, in the case of "landlords' transfer fees" under section 26C(3) of the Act.

This is the main object of the resolution I am moving in this Council.

Besides, there are other defects in the procedural law relating to the payment of the "landlords' fees" and the "landlords' transfer fees."

In the first place, where the landlord has to come before the Collector and apply for payment of the fees in deposit, he incurs expenses of applying for it without getting such costs from anybody. I submit, that it is too hard for him to bear costs through no fault of his. I would therefore suggest that rules be so framed that the party applying for payment will get his costs of such application from out of the funds in deposit as transmission fees.

In this connection, Sir, I may be permitted to say that in the old law, the party depositing the fees at the time of registration had to pay only "costs necessary for the transmission thereof to the landlord."

But now, under the present law, the transferee has to pay "the prescribed costs of transmission" which, under the statutory rule No. 25(3) is levied at 10 *per cent.* of the fees paid.

Certainly, Sir, these costs are not spent by the Collector when he does not remit the money by money-order at all. And under such circumstances there appears to be no reason or justification for refusing the parties their costs for applying for money before the Collector.

Another difficulty arises from the malpractices adopted by many of these transferers of occupancy holding. In order to avoid the payment of the "landlords' fees," which amount to 20 *per cent.* of the sale price, mentioned in the deed of sale, or 5 times the annual rent, whichever is greater, the party makes a mis-statement of the character of the holding in the deed of sale. By such fraud, the landlord suffers. The landlord has to go to the civil court and file a suit there to establish the fact that what was actually sold was merely an occupancy holding and not a permanent tenure or holding at a fixed rate of rent and upon getting a decree in his favour, he can claim for the landlords' transfer fees provided by the Act. This means additional costs and harassment, which ought to be guarded against. Difficulty also arises when the transferor makes mistake in the names and addresses of the landlords.

I therefore suggest, that the Registrar be empowered to compel the party presenting the document for registration, to produce a copy of the record-of-rights in respect of the holding or land sold, or a copy of the rent receipt, just to show the real status and character of the holding and the correct names and addresses of the landlords.

As survey and settlement in the majority of the districts of Bengal have now been completed, this procedure will not be a very difficult task. The Registrar may be authorised to refuse registration unless and until a copy of the record-of-rights or a copy of the rent receipt is produced before him. I think this will prove an adequate check upon such malpractices.

In the last place, Sir, I have to point out that the fees prescribed for opening a personal ledger is much too high and is almost prohibitive. I submit it should be reduced to a low and uniform rate of Rs. 5 only as has been fixed for registration of a share by a co-sharer landlord under the recent notification.

I therefore suggest that the Government be pleased to take steps in the matter and amend the law and the rules in such a manner as it may deem necessary.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Although I am absolutely against the transfer fee and landlord's fee, but when it has become the law of the land I think I can agree with my friend Mr. Sarat Kumar Roy in asking the Government to try to amend the present rules that have been made. In the case of a co-sharer landlord it is really becoming very difficult to get his share of the landlord's fee. Unless he can get the assistance of other co-sharers in the matter, the landlord's fee remains with the Collector for an indefinite period of time and it so happens that when one co-sharer's fee is very very small, he does not come forward and join with other co-sharers in getting the money out of the Collectorate. That being the case I think my friend Mr. Sarat Kumar Roy is right in saying that in the case of any estate where the co-sharer's share in the estate is known to the Collector, the Collector should, if the co-sharer comes forward to get his share of the landlord's fee, pay the same to the co-sharer. This of course may not be possible in a case where the Collector is not aware of the actual share of a tenure-holder. If it is a tenure under an estate and the occupancy right is the right under a tenure, then the question may be difficult to follow. But where the Collector in his own record knows that such a person has got some distinct share which is recorded in his record, he should be given the right of applying to the Collector for getting his share of the landlord's fee.

As regards the other points I think Mr. Roy is perfectly right in pressing many other points but I would not like to repeat them; so I whole-heartedly support this amendment, although probably Mr. Roy did not expect any support from me.

Rai Bahadur KESHAB CHANDRA BANERJI: I rise to support the resolution. This question has been discussed on the floor of the House on many a previous occasion and the various landlords' Associations in the province made representations to Government pointing out the existing defects in the rules on the subject and asking for their modification. It was only recently that we had the privilege of discussing this important matter with the late Sir Provash Chunder Mitter. He gave us a patient hearing and promised to summon a conference of landholders and *zemindar* members of this Council in order to find out what the difficulties actually were and in what way they could be removed. In the *mufassal* we have practical experience of this difficulty; where the number of co-sharers is large, it becomes very difficult for them to apply for withdrawal of the deposited transfer fees and we know that the difficulty is so great that it is well-nigh impossible for all the landholders to submit a joint application, with the result that the amount due to them is forfeited to the Local Government. The Nawab Sahib has said that he is not in favour of the transfer of occupancy holdings or of the realisation of *nazarana* on that account; but that is a different matter altogether. The amount of *nazarana* has already been considerably reduced and if the existing law is not amended the landholders will suffer a good deal, and they will be deprived of what little they are entitled to and their legitimate dues will be forfeited to Government. I would therefore like to suggest that the present Hon'ble Member in charge of the Revenue Department should call a meeting of the representatives of landlords in this presidency. There are many landholders' Associations in Bengal and in this Council also there are some members who represent landlord interest. I think it will there be possible to come to a definite decision with a view to undertaking legislation either for amending the Bengal Tenancy Act or the rules framed thereunder.

With these words, I wholeheartedly support the resolution.

The Hon'ble Sir CHARU CHUNDER GHOSE: At the outset I may assure the honourable members who have spoken on the subject that the attitude of Government in this matter is not unsympathetic. In the first place I would draw the attention of the Council to a communiqué on this subject, dated the 23rd September, 1931, which explains very clearly the difficulties experienced in the transmission of landlord's fees and transfer fees, the reasons for those difficulties and the manner in which they could be surmounted. In forwarding copies of this communiqué to the different landholders' associations in this province, it was mentioned that if any constructive suggestions were received there would be no difficulty whatsoever in giving the existing practical difficulties very careful consideration. Since the issue of this communiqué, I may mention, many useful suggestions have been received. They have been carefully considered in the department in consultation with local officers and

Government are still continuing this policy and are giving the suggestions received their very best attention. It is not the Government's case that the rules are incapable of improvement. But there are many practical difficulties involved, and until and unless these difficulties are surmounted it will not be possible to amend these rules. These difficulties are entirely due to the multiplicity of co-sharers, complexity of the system of land tenure which exists in Bengal and the unwillingness of the co-sharer landlords in many cases to co-operate in the matter of the withdrawal of the fees due to them. On behalf of Government I may assure the mover that continuous endeavour is being made and will be made to improve these rules, but it is obvious that the language of these rules cannot be discussed with any advantage on the floor of this House. I trust on this assurance from Government which I am at present giving, it will be possible for the mover to withdraw the resolution. To illustrate the sincerity of Government's intention in this matter I would invite the attention of the honourable mover to a notification, dated 13th November, 1933, which introduces rule 29D and gives additional facilities to co-sharer landlords to withdraw the fees due to them. This also gives facility to co-sharer landlords, who do not apply for the opening of a personal ledger. I will now deal briefly with the points raised by the mover. It is complained that while the rules have been modified in connection with the landlord's transfer fee, nothing has been done to simplify the payment of landlord's fees. According to rule 24, the expression "transfer fee" applies to both landlord's fee and landlord's transfer fee, and equal facilities have been given in the rules for withdrawing each kind of transfer fee. The difficulty seems to be that landlord's fees, *i.e.*, fees payable under sections 12, 13, 15 and 18 of the Act, are usually much smaller than the fees payable under the other sections, consequently it is not expedient for a number of co-sharer landlords to join together and make application for payment of such small sums of money. The cost, it is said, is often out of proportion to the small sums involved.

(Here the Council adjourned for 15 minutes.)

(After adjournment.)

The Hon'ble Sir CHARU CHUNDER GHOSE: Mr. President, Sir, with reference to the difficulties pointed out by the honourable member who moved this resolution as regards the question of cost, I ask, is not the difficulty inherent in the complex system of land tenure in Bengal rather than in the rules as framed? In any case, cost can be reduced considerably by including a number of items in one application [*vide* rule 29 (*b*)] and as already pointed out additional facilities have been given by new rule 29D.

The main object of the resolution, as I understand, is that the law should be modified by inserting a provision to give the same facilities for the withdrawal of landlords' fees as for landlords' transfer fees.

But, as already mentioned, the same facilities do exist, and if instances are brought to the notice of Government that the rules are not being interpreted in any particular office, Government will certainly take up the matter and do all it can to enforce the rules in question in the manner intended by Government.

As regards the suggestion that the party applying for payment should get the costs of his application out of the sums in deposit for transmission, it is open to three serious objections: (1) How can any money be paid as costs to an applicant until his application succeeds, and his title to money is established? (2) How are these costs to be assessed? (3) If landlords are to get costs of application from the funds in deposit as transmission costs, the transmission fees will have to be increased which would be a matter of great hardship to the tenants. Moreover, the mover is under a misapprehension when he says that the costs are not spent by the Collector. This may happen in individual cases but in the end the Collector's expenses are more than his receipts.

I have gone into the figures and find that the total of the transmission costs and process fees compared with the expenditure work as follows:—

	Receipts.	Expenditure.
	Rs.	Rs.
1931-32	6,89,567	8,23,138
1932-33	6,97,318	8,08,081

It is hoped that these figures will satisfy the mover that the proposal is objectionable and impracticable.

The malpractices adopted by the transferors and transferees of occupancy rights have been brought to the notice of Government already and that Government recognise that measures to check these malpractices are advisable. The suggestion that sub-registrars should be authorised to control such malpractices is at present being examined by Government. No decision has yet been reached, so for the present it will suffice, if I mention that there are great practical difficulties and objections involved in adopting the suggestion. It will throw a great deal of additional work and heavy responsibility on sub-registrars and their staff and there is considerable risk that, under such restrictions as are proposed, parties may have great difficulty in registering *bonâ fide* transactions, especially when the record-of-rights is not up to date.

As regards the alleged prohibitive costs of opening a personal ledger account, Government will be glad to consider whether the rates of fee should be reduced if the mover will be good enough to write to Government giving reasons in detail (1) for considering the rate of fee as too high, and (2) to show that the reduction in the rate of fee would result in the opening of a substantially greater number of personal ledger accounts. As I said at the commencement of my speech, if the hon'ble mover of this resolution and those who sympathise with him will kindly

write to Government making suggestions for the removal of these difficulties, the matter will receive not only the consideration of Government but also my personal consideration, and I shall do all I can to remove the difficulties which are now confronting the landlords. I trust that this assurance will be considered satisfactory and it will not be necessary to press for a division.

The resolution was than by leave of the House withdrawn.

The following motion, standing in the name of Maulvi Abdus Samad, was in his absence deemed to have been withdrawn:—

"This Council recommends to the Government that immediate steps be taken to discontinue the practice of preparing lists of jurors and assessors with the help of police officers and that, as far as practicable, in the trial of a sessions case of a particular subdivision, the jurors and assessors other than those of that subdivision be summoned and empanelled."

Resolution regarding Sir William Wilcock's Irrigation Scheme.

MUNINDRA DEB RAI MAHASAI: I beg to move that this Council recommends to the Government that a loan of Rs. 5 crores be raised to give effect to the Irrigation Scheme prepared by the Irrigation Expert, the late Sir William Wilcocks.

Mr. President, Sir, perhaps this House is aware of the fact that the late Sir William Wilcocks visited this presidency twice to study the irrigation problem of Bengal. He came from Egypt not at the invitation of Government but at the earnest solicitude of the then Director of Public Health, Dr. C. A. Bentley, who conceived the idea of making Bengal free from preventible diseases specially malaria. Not being successful in his experiment of flushing small areas, he sought the help of the late Sir William Wilcocks to find out ways and means to solve the problem of sanitation through irrigation and drainage channels. Sir William, after carefully studying the conditions of Bengal, prepared a scheme estimating between 4½ to 6 crores of rupees. He guaranteed to revivify Bengal with that sum and he staked his world-wide reputation to work out the scheme. But Government in their greater wisdom did not think fit to accept it. They asked their own Engineer Mr. Addams-Williams to put forward his criticisms thereon. The man whose masterly inactivity on the one hand and whose engineering follies on the other have ruined Bengal was entrusted with the task of criticising that great international expert and the result can very well be imagined. Had the Government been honest and sincere in their professions, they would have tried either to improve it or to prepare an alternative scheme. They have not done anything whatsoever. They have got neither clear conception of the magnitude of the task nor

any definite policy to follow excepting of course their masterly inactivity or some sort of eyewash through patchwork. In the absence of any other better scheme, we want to give a fair trial to the scheme prepared by the late Sir William Wilcocks. The finances of Bengal which are not elastic enough to provide funds at any future date to further such a scheme out of ordinary revenue, I propose the launching of a loan of 5 crores of rupees to carry out the scheme. It was a question of life and death to the people of the province and 5 crores was an insignificant amount to save a nation from the grip of death and desolation. Sir, at this stage I want to make it clear that it is far from my intention to burden the present Hon'ble Member for Irrigation with legacies of the past. I do not wish to hold him responsible for past follies and the consequent criminal waste of public funds by unscrupulous people who did not feel the least compunction to play ducks and drakes with other people's money to satisfy their whims and caprices. I do not propose to in any way connect him with the responsibility of wasting away crores of rupees for the purchase of the familiar white elephants, I mean the much-talked-of dredgers. It would have been better if he could see his way to give them a decent burial underneath the Bay of Bengal, leaving no traces behind, thus saving lakhs of rupees provided for their maintenance charges. I should not refer to another engineering folly, the Grand Canal project of Mr. Addams-Williams which would have wasted away crores of rupees had not the Council refused to grant the demand. But for the culpable negligence and apathy of Government in the resuscitation of the dead and dying rivers, rural Bengal would have presented a different picture. Travellers like Ralph Fitch Bermier or Hamilton were not visionaries imbued with poetical imagination. They wrote what they actually saw during their travels. West Bengal has been described by them as the Garden of India—one of the most fertile and most flourishing countries in the whole peninsula. And what do we find to-day? It has assumed a desolate appearance. Wherever you go you will meet with pestilential areas where disease, death and desolation reigned supreme. The land which once smiled with health, wealth and plenty have now been converted into waste lands or jungly areas fit for the habitation of the denizens of the forest. The whole countryside teams with deserted towns and villages. And may I inquire, Sir, who is responsible for this deplorable state of the things? I think I am fully justified in bringing home the guilt to the British administrators who have miserably failed to keep alive these natural waterways. Not a single finger had ever been raised to save the people from ruination in health and wealth. The lands described as সুজলাং সুফলাং শস্য শ্যামলাং by the great literateur Bankim Chandra half a century ago have now deteriorated to such an alarming extent, the magnitude of which cannot be conceived unless and until one sees the pitiable sight with his own eyes. I appealed to the Hon'ble Irrigation Member several times on the floor

of this House to leave his cosy seat and come with me and see for himself the condition of at least some of the once flourishing towns and villages. But to my utter misfortune my appeal fell on deaf ears.

Sir, the late Sir William Wilcocks was not an idle dreamer. He was a practical Irrigation Engineer. He might have passed the last days of his life in missionary work or in the translation of the Bible into Arabic but that cannot minimise his high qualifications as an Irrigation Expert. Conditions of the valley of the Nile may be different from the Gangetic valley but that is no reason why his scheme for Bengal should be whittled down and decried as impractical. May I inquire, Sir, have the Government formulated any better scheme to save Bengal? Their patchwork here and there trumpeted through inspired communications in the Press cannot solve even a fraction of the great problem which confronted Bengal. Such sort of piecemeal work will not do. The spending of a few thousands here and there may benefit particular localities to a certain extent but that alone will not advance the cause we all have at heart. Sir, I have already stated that I am fully conscious of the fact that the inelastic revenues of Bengal can ill-afford to launch the gigantic scheme under discussion. It would not have assumed such gigantic proportions had action been taken at the time when it was most needed. But nothing was done to save these waterways. The time of atonement for past delinquencies has come. If you really want to save the province, pray make an honest and sincere effort to resuscitate the dead and dying rivers, rivulets and other waterways. A loan has got to be raised for this special purpose. The Government of the United Provinces raised a loan just a few years ago for the Sarda Land and Hydro-Electric Scheme and it is now a paying proposition. Irrigation works under the Northern India Canal and Drainage Act of 1873 have done much for the irrigation of the Punjab, but what has the Government of Bengal done for irrigating the province. Government may point out some canals such as Eden Canal or the recently opened Damodar Canal. But only a few canal cuttings won't do. Provision must be made for the continuity of water during the dry months. Unless arrangements are made to construct reservoirs to hold up the water no permanent beneficial result can be expected. No attempt has hitherto been made to harness this gigantic mass of potential water power—be it due to floods or rain—and the result is that in these canals water can be had in abundance in the rainy season when there is enough water everywhere but in dry months these canals would be of little use. The rivers and rivulets of West Bengal had prior to British administration served the purpose not only of irrigation for agricultural purposes but also drained out water from the surrounding country. These made the countryside rich both in health and wealth. Moreover, occasional floods washed away all impurities and the deposit of fat silt when the floods were over enriched the soil and made it more fertile and productive. The erection of embankment has impeded the [illegible] of the floods and as I have already stated no attempt has been made to

store up this mass of water for utilisation during droughts or to keep up the regular flow of water in the canals, rivers or rivulets. This huge waste of water power is going on without let or hinderance. Sir, I have seen the true state of things with my own eyes. During my excursions in the countryside a few months ago, I crossed mighty rivers like the Damodar and the Dwarkeswar and innumerable other rivers and rivulets in motor cars. They were no better than sandy deserts with streaks of water flowing here and there. Had these rivers been resuscitated and the rain and flood waters been harnessed and stored up in reservoirs and were allowed to flow through these waterways the country would have assumed a different aspect. Bengal is in the grip of death. Preventible diseases like malaria, kala-azar, cholera, small-pox, tuberculosis are causing havoc in the country and what are these due to. The old bed of dead rivers which became stagnant pools during the rains and the silting up of river beds which drained away the water of the surrounding areas are the chief causes which contribute not only to the notorious unhealthiness of the countryside but has also helped to diminish the productivity of the soil. As I have already pointed out it was a question of life and death to the people and should not be lightly passed over. Law and order, and free distribution of quinine and plasmochin cannot save a nation. Government has failed to justify itself at least in West Bengal—it has failed to perform its primary duties, it has failed to keep the districts alive. It has turned smiling villages into pestilential areas. Lack of funds was no valid excuse. Float a loan and money will be forthcoming to save Bengal from death and desolation. The remedy suggested by the late Sir William Wilcocks was not an impracticable one. His proposal was that the red rich water of the river must combine with the flood water to spread over the land and then run back along its different channels, keeping the rivers well scoured and the surrounding areas healthy and fertile with newly deposited silt. If the scheme be framed on similar lines and immediate action is taken, Bengal will once again become a flourishing country with abundance of health and wealth which have deserted the countryside during British administration. It was surely an irony of fate that while the sister provinces by their unstinted efforts have succeeded in converting the arid and unfertile waste lands of Upper India into splendid granaries, the world famous and proverbial granaries of fertile Bengal have turned into unproductive waste lands or swampy tracts well adapted for the creation of germs of various sorts of diseases.

Pray save the nation from imminent ruin. Raise the requisite loan and we guarantee our wholehearted support. Pray make an honest and sincere effort to bring back health and wealth which have left the country for good.

The Maulvi Alhaj Nawab Bahadur Sir ABDELKERIM, K.C.I.E., of Dhubri: Mr. President, Sir, I have listened with a

great deal of pleasure and delight to the well-thought out and calculated manuscript eloquence that has flown from my friend the Rai Mahasai. I wish to convey to him my thanks for having absolved me from my past sins, for having said on the floor of this House that it was not I who was responsible for what had happened in the past. He has referred to the waste of public money and things of that kind. He has also referred to that wonderful man Sir William Wilcocks and I do not in any way yield to him in my admiration for that genius Sir William Wilcocks. Well, Sir, he has drawn a doleful picture of certain parts of Bengal where he has told us he has toured and seen that what was once a smiling field and a smiling garden has now turned into a howling wilderness. He is of opinion that the one remedy is the remedy which was suggested by that great man Sir William Wilcocks; but I shall presently come to the remedy that Sir William Wilcocks really suggested. Before I do so, may I tell him that although at the particular moment I was not able to accompany him to the arid wastes and deserts he has described, I too have seen with my own eyes what things are and what they should be. He has also referred to the dead and dying rivers and resuscitating them. It was only the other day that my friend's bosom heaved with joy when he found that a machinery was constructed by this House, something which was equally his dream and my dream, to deal with the improvement of the waterways of Bengal. That machinery is to do all that is wanted to be done as regards the resuscitation of the dead and dying rivers. He has talked of Jessore and Nadia. I wonder if he has been there; I wonder whether he has seen the Nabaganga. I am not aware if he has heard of that historic river which at one time flowed over a distance of a hundred miles and carried traffic and was the highway of commerce in both these districts and was choked up with weeds and what not and remained as such for decades. In order to summon the magic wand of Alladin to indicate some sort of method by which it could be improved, the Irrigation Department was appealed to and many schemes were prepared. These schemes were estimated to cost somewhere in the region of 14 to 15 lakhs. Further, some schemes were prepared which amounted to a lower figure, namely, 5 lakhs, and thereafter another scheme was prepared which was estimated to cost about 3 lakhs, but, alas! such are the times when financial stringency pervades not only this country but all the world over, that it was not possible for Government to launch any scheme which would cost so much money. But the result to which he so earnestly looks forward has been achieved by the people themselves. The two district boards came forward through their Chairmen and met the Irrigation Member in his room and a plan was evolved costing as much as Rs. 60,000, but even then no ray of sunshine came into the room. Thereafter the two Chairmen went back and persuaded the people to voluntarily help the landlords and the scheme dwindled down to a small figure in the region

of 14,000 or 15,000 rupees. The modified scheme was taken in hand and a cut was made with the result that the river which was dead for nearly a century was cleared of all weeds and became a mighty torrent and brought back health and prosperity to the people on both its banks. Surely something has been done and Government is not so satanic as it has been often painted.

I will now come straightaway to the schemes which were put forward in all earnestness and sincerity by that great man Sir William Wilcocks. It is rather amusing to be told by the mover of the resolution that Sir William Wilcocks in his later days turned into a sort of hermit or missionary and was engaged in translating the Bible. Well that, I take it, was the occupation which kept him active in the latter part of his life when he had nearly spanned four score of years. Anyhow he did not reach that span when he came to Bengal and delivered certain lectures which were consolidated into pamphlet form and he did me the honour of presenting me with a copy, the very first copy available, of that pamphlet. Now, in that copy, which contains the series of lectures delivered by him, his whole scheme was unfolded. I have a précis of his schemes and I shall presently show you the effects of those schemes and what those schemes will require to be put into effect. In the first place, Sir William's estimates for the excavation of 6 rivers east of the Damodar was—

	Rs. lakhs.
Earthwork	58
Masonry	10
Escapes	17
	85

Then he went on with his scheme for excavating rivers in Central Bengal—

	Rs. lakhs.
Earthwork in Murshidabad ...	15
Nadia	10
24-Parganas	5
Contingencies	10
	40
Masonry works	75
Total ...	115

Sir William had also a very happy knack of saying that the figures he put down should always be doubled in order to provide that they should be within a reasonable limit of correctness. Now doubling this we get 230 lakhs. Then he said that at the head of the Bhagirathi six spurs should be constructed—

		Rs. lakhs.
At the head of the Bhagirathi 6 spurs	...	450
100 miles training lines	...	5
At head of Bhairab-Jelangi 200 miles training lines	...	10
At the head of Mathabhanga 12 spurs	...	9
At head of Gorai 2 spurs	...	1·5
20 miles training lines	...	1
Total	...	31
Grand total		346 lakhs.

I can assure the mover of this resolution that I had this scheme very carefully examined and scrutinised by the late Chief Engineer, Mr. Addams-Williams, who too was known to be a great Engineer and who too had done any amount of good work. Anyhow on examination it was found that the spurs which were suggested by Sir William Wilcocks would be destroyed by the river.

The 320 miles of training works which he had suggested could not be made for Rs. 16 lakhs. Such works would not even keep the river in its dry weather course.

Then to fix the Ganges in a particular course would require practically continuous revetment of a heavy type on both banks. A few spurs cannot prevent changes in such a river. The subsidiary works proposed by Sir William Wilcocks will be useless, unless the relative levels of the Ganges, Bhagirathi, Bhairab, Jelangi and Mathabhanga are altered. This could be effected by a barrage, but the cost of a barrage would almost be prohibitive and the area benefited would probably not be more than 3½ million acres. I wonder whether the mover of the resolution seriously thinks of constructing a barrage across the Ganges. If he does, he will want a much larger sum than 5 crores. May I tell him that I have had the privilege of seeing the wonderful barrage in Egypt called the Assuan Dam? Does he know what amount of engineering skill was required for this barrage? Does he know how much it cost? Does he know that an international board of engineers were invited to give of their best? Does he know that contracts for

the materials of this barrage were placed all over the world? No, probably he does not. I can only say that where ignorance is bliss it is folly to be wise. I went very thoroughly and carefully into the figures and schemes prepared by the late Sir William Wilcocks. Unfortunately Bengal did not have the benefit of that wonderful engineer when he was in his prime. He came here when he was nearing the span of four score of years and was engaged in translating the Bible into Arabic and when his occupation, so far as it related to engineering problem, was not very congenial. His mind was then divided into two compartments—one to the formulation of engineering schemes and the other to missionary work. The schemes prepared by him were therefore on examination found to be wide of the mark. The total sum required to give effect to all those schemes which were suggested by Sir William Wilcocks would come to nearly 40 million pounds, and I ask in all conscience whether the mover seriously thinks that Bengal will be capable of raising that amount. Does he not think that even what he proposes, namely, 5 crores, will be a mere drop in the ocean, compared with 50 millions of pounds required to give effect to the full scheme of Sir William Wilcocks? But it will probably console the soul of the Rai Mahasai when I tell him that I had the privilege of meeting this gentleman again after he had left our shores. I had the privilege of a long discussion with him in the privacy of my rooms at Cairo, when I explained to him all our proposals and drew his attention to his own figures and he smilingly agreed. Let us hope, he said, that you will succeed. But I told him that we must proceed slowly in the matter. He made other suggestions also and I can assure the House that those subsidiary suggestions are being given effect to and would be carried out and are not lost sight of; and then he gave me some suggestion regarding the dead and dying rivers. I can assure the House and the mover, Sir, through you, that I explained to this great sage my humble proposals about the Waterways Trust and they received his blessings at Cairo, and he said "Yes: go and get that done and that is a step in the right direction" and I carry these words as a message from Sir William Wilcocks to the Rai Mahasai. Then, Sir, with your permission I would go on and add that three of the rivers east of the Damodar run in valleys and hence the water would not overspread the land to any considerable extent and would cause serious damage to the valleys.

In some years they would only run full for a few weeks in the irrigation season as they would be only 4 feet below ground level. These works would increase the present water-logging in certain areas. Escapes costing large sums would be required. That for the Kana Damodar alone would cost about 4 lakhs. The cost of land acquisition alone would be about 40 lakhs. Nothing is allowed for bridging. Probably the total cost of the scheme would be 130 lakhs or multiplying this, according to the same law as has been propounded, by Sir William Wilcocks, by two, we get Rs. 260 lakhs.

I think the mover will readily agree that the scheme which he referred to as having been propounded by Sir William Wilcocks is in the nature of Utopia. At present, Sir, it is not possible of fulfilment. Sir, I do not yield to him for a moment in my desire to see the dead and dying rivers resuscitated; I do not yield in my desire to anyone to see that something should be done for them and I claim that by the grace of God something has been done. I also claim that really a good beginning has been made by the Bill that has just been enacted, and I am really giving effect to the wishes of Sir William Wilcocks, inasmuch as the principles of that Bill have been fully discussed with him and have received his blessings. Well, Sir, after all that I have said in connection with my friend's proposal I hope he will see how wild his proposals are and how impossible they are of being given effect to. Sir, he has referred to the Punjab and has compared the Punjab with Bengal. I wonder how he could have been forgetful of the fact that Bengal is not the Punjab nor is the Punjab Bengal. Bengal is not a land par excellence for irrigation, where chances for it are so limited. I can assure him that now that the question of the improvement of waterways is being tackled, the other question, *viz.*, the question of irrigation, will also be taken up, and the suggestions which have been thrown out by the Expert Committee will gradually be examined again with a view to do something on the same lines as has already been done. Let him not also forget that he should not be miserly or niggardly in appreciating what Government have done. I think the Rai Mahasai was invited to be present on the occasion of the opening ceremony of the Damodar Canal and I shall be very sorry to know that such a true patriot as he could not attend. But the Irrigation Department will be very glad to extend this personal invitation to him even now, to visit the canal and see for himself what the canal is doing. That canal has cost Government one crore and eleven lakhs, and is intended to do a good deal of good work and confer benefit on the people living in those regions. It will irrigate something like two lakhs of acres; so something has been done. But what I lay stress upon is this: that it is disgraceful that people should forget what has been done and that they should only point their fingers to what has not been done. First of all I say, Sir, if you do not learn how to be grateful to Man you will never learn to be grateful to God. Accept what has been done, and for that I think one should feel thankful, and then ask for further benefits; that should be our attitude of mind. So I do not think my friend requires any further assurance; if he does I am quite willing to give him that, and tell him that I equally desire with him to be able to put up a modified scheme and carry it into effect if I only had the means. If you help me with 40 millions of pounds, not to speak of five crores, which will only be a drop in the ocean, I could put up a huge barrage in the Ganges and seek

the advice and help of all the experts throughout the globe, get their plans and get them executed. For the present, however, five crores of rupees are merely a Utopian conception and that being so, I am compelled to oppose the resolution.

Khan Bahadur MUHAMMAD ABDUL MOMIN: At the outset I wish to assure the Hon'ble Member in charge of Irrigation that so far as his branch of the Government is concerned, nobody, either here or outside, considers it a part of the satanic Government. We do not attribute any satanic motives to at least that branch of the Government. What we do, however, think of that department is that it is more or less an impotent branch of the Government, which is powerless for doing either good or evil. Satan at least has got some schemes, some designs or some advice, but so far as the Irrigation Department of the Government of Bengal is concerned, in the past they did not appear to have any designs or any schemes, unless perhaps it had designs on the finances of the country without perhaps having any scheme for doing any good. The Hon'ble Member has with commendable pride referred to his Waterways Bill which he thinks is a sort of Alladin's lamp and to which he has referred very often in his speeches. He expects that by passing the Waterways Bill he has simply to invoke the powers of Alladin's lamp, power which that lamp is supposed to confer on its owner, for resuscitating the dead and dying rivers of Bengal and his object will be fulfilled. I would, however, very humbly remind the Hon'ble Member for Irrigation that whatever little power we tried to give him under that Bill he himself gave it away with his own hands. In that Bill he has only power to do something for navigation, but beyond anything which is not for the "purpose of navigation" he is absolutely powerless. So far, therefore, as the resolution of Rai Mahasai is concerned, the Waterways Bill is practically futile. The Hon'ble Member also appears to be very proud of his pet project, the Damodar Canal scheme. Of course he is perfectly at liberty to fancy and assume that this project is going to bring prosperity to the whole of the Burdwan and Birbhum districts, but there are others who do not think so well of this scheme: they think that it would have been better if so much money had not been spent on a scheme of doubtful utility. However, he is welcome to his own fancies as is the saying:—

همکو معلوم ہے جنت کی حقیقت ساری

دلکے خوش کرنیکو غالب کا خیال اچھا ہے

As regards this particular resolution, what it really wants is that Sir William Wilcocks' scheme should be given effect to. There, Sir, I am perfectly at one with the Hon'ble Member. We are not prepared

—and no Government I think will ever be prepared—to spend Rs. 5 crores on a scheme which its officers do not consider to be a good scheme or a scheme which may really not be of much use to Bengal. As a matter of fact, some of us think that so far as West Bengal is concerned, instead of having all these expensive schemes, it will be much better if Government revived the old irrigation projects which existed before, namely, tank irrigation, which will have the double effect of not only supplying water to our fields, but also of purging our country of malaria and other fell diseases and also improving the economic condition by being able to yield a larger produce than at present. Therefore it is not right to say offhand that we should spend Rs. 5 crores on a particular scheme which has not been proved to be the best system so far. As a matter of fact, so far as irrigation schemes are concerned, we have become very sceptical and I would rather not spend any money where the ultimate success is doubtful. For these reasons I regret we cannot lend our support to the resolution moved by the Rai Mahasai.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I must say at the outset that the resolution as it stands and the form in which it has been couched is not such that can command the acceptance of the House. The difficulty of supporting this resolution is this: that our friend Munindra Deb Rai Mahasai has not only suggested that a loan of Rs. 5 crores should be raised but that the money should be spent to give effect to the irrigation scheme of Sir William Wilcocks. Sir, the difficulty of Sir William Wilcocks' scheme has not properly been realised by my friend, Munindra Deb Rai Mahasai. I must say that it is certainly to the credit of the Hon'ble Member in charge of the Irrigation Department that when Sir William Wilcocks came to this country, he gave us full facilities to discuss this matter with Sir William Wilcocks. I was myself at that time a member of the Irrigation Standing Committee and I remember that in his very room the Hon'ble Member discussed the irrigation schemes of Sir William Wilcocks, and that he gave us all facilities not only to discuss his schemes but he promised also to get expert advice on them. I must say that he did it and he published a book which is a red volume and of which a copy is available in the Library in which the discussions and counter-discussions, criticisms and counter-criticisms both of Sir William Wilcocks and of Mr. Addams-Williams are available to the public. Unfortunately, Sir, we have been led away by sentiments. Sir William Wilcocks' scheme received a good deal of public sympathy at the first stage, but no criticism appeared from the Engineering point of view as to the answers that Mr. Addams-Williams gave to Sir William Wilcocks. Sir, it is difficult for a layman to decide between two expert opinions which are against each other, one practically condemning the practicability of the scheme of Sir William

Wilcocks. Sir, that was how the matter was left, but I should certainly think that the Hon'ble Member in charge of Irrigation Department was good enough to give every side an opportunity to have his point of view cleared so that a clear-cut issue might be acceptable to the country as well as to his department. If I remember aright, because I read that book some time back, Sir William Wilcocks suggested three main schemes: one is, doing away with the entire system of embankments in the Damodar; the second is, fixing the Gangetic rivers in their present position; and the third is, construction of a barrage over the Padma. I might take the last scheme first. The difficulty of a barrage over the Padma was not probably realised by Sir William Wilcocks and the latest outstanding example of what the Padma might be is in the Hardinge Bridge where after building a bridge at a cost of four crores, I think, the Eastern Bengal Railway has very recently sanctioned a sum of Rs. 40 lakhs in addition, with a view to keep the bridge standing in the proper position or to maintain the river fixed between the two points. Below the Hardinge Bridge the Padma is fixed, and unless the two points between Lalgola and Pakshey are fixed, the Padma will come in with all its fury and force. It is not unknown to the House that where the river Engineers of the Eastern Bengal Railway did not notice any corrosion at about 4 o'clock in the afternoon, they came back next morning and found that 110 feet deep cuttings were made over a length of about 2,400 feet washing away the entire guiding bank in that area. That really is a problem which we have to tackle. At the same time, though it is certainly true that a section of the Padma is of that character, if it is studied from the point of view of local knowledge, it will be found that though the Padma is unsteady near about the Hardinge Bridge, near about Lalgola it is not so. But there the problem is of a different type. If you go between Lalgola and Rajmahal, you will find hills of sand which might be existing to-day but which might not be seen next year after the floods. That is the main difficulty of the Irrigation Department which should not be forgotten. There are certain other features which our Engineering Department has not yet noticed and that is in respect of the vacillating character of the Padma. In these portions, the mouths of the Gangetic rivers, *viz.*, Jalangi, Churni, Matabhanga, Gorai including the Hooghly are existing still almost where they existed at about the Moghul period with slight modifications. How is it that the river has not corroded in these places during all this time? I certainly think that, though I do not accept Sir William Wilcocks' view that the barrage is the final word in river engineering, that point of view has not been examined by the Irrigation Department, namely, how is it that in spite of the corrosive action of the river near about the Hardinge Bridge there has been no change in the mouths of these outlets for the last 150 years.

There is another point of view which the river Engineers of Bengal have not realised and that is to take advantage of the oscillating course of the Padma. You will find that the course of the Padma is once flowing by the side of the Nadia district and corroding the bank there, and at another time it is corroding the bank of the Pabna and Rajshahi districts. It is possible to utilise nature and get its help at the opportune moment. At a time when the Padma is receding from its normal course at one bank, it is impossible to tackle the problem at the opposite bank, but would it or would it not be possible to control the Padma at least at the mouth so that the river channels might be kept alive for some time to come.

As I have already said, the second point which Sir William Wilcocks dealt with is to do away with embankments altogether. If we were to begin with a clean hand on a blank slate, it would have been possible to do away with all embankments. But to do away with the entire embankment system now would be disastrous in the Burdwan Division, because, rightly or wrongly, the embankments are there, and as a result of the existence of these embankments, the river bed is at a higher level than the adjoining lands. The effect of doing away with embankments will be to flood the entire area on both sides of the river. Sir, it is quite easy to say, "Do away with embankments because embankments have brought about the present condition;" but if we were to do away with embankments, the result, as I have already said, would be disastrous. After studying this question very carefully, I have come to the conclusion that it would be unwise to proceed with a scheme of this character at once. We should proceed with great caution. As the Hon'ble Member in charge of the Irrigation Department announced last year, Government's policy is to do away with embankments slowly, and I believe the time will soon come when it will be possible to adequately deal with this question.

Sir, as regards West Bengal rivers, the Hon'ble Member has referred to the cutting of the river Nabaganga. Sir, I am personally interested in it and know what the effect of this cutting has been. I must therefore support this project which has been brought forth with a view to develop this small rivulet. The cutting of this river was estimated at Rs. 1,42,000 by the Department, and it has now been done at a cost of about Rs. 14,000, leaving out the construction of bridges which is of local interest and which has cost about Rs. 6,000. There Government have come with a helping hand, in spite of their adverse financial condition. If it would be possible to set apart a lump amount year after year with a view to develop projects like the Nabaganga, it would go a great way towards reclaiming these dead and dying rivers. I think we should not now take up big schemes. There are innumerable small schemes in which the countryside is vitally concerned, and if these small schemes are taken in hand, it will render service to those parts of the country which are affected

by them. From this point of view, I can say that Nadia, Jessore and some other district boards are quite willing to come forward with similar schemes, provided encouragement in the shape of financial aid is received from Government. Like the Nabaganga scheme, there are other schemes, *e.g.*, the Bhairab and Jaynagar schemes. If the Bhairab scheme is taken up, it will not only save the district of Nadia but a large part of Jessore also, and that at a much cheaper cost. That being so, the district boards of Jessore and Nadia are even now prepared to take up these schemes, provided Government give an assurance of financial support in meeting a part of the expenditure. I think the time has now come when something should be done for improvement of smaller waterways and drainage channels; as I have already said in connection with the Waterways Bill, the operations of this Bill, after its enactment into law, will go a great way, in spite of some opposition, in resuscitating the navigable channels of eastern waters. And those of us who have had experience of eastern waters in the past know the tremendous difficulties we have got to face there if we let the present state of things to continue. The water-hyacinth, for example, has increased to such an extent that it has become a serious menace to Eastern Bengal and I must support the Hon'ble Member in every way in his efforts to do away at least with this water-hyacinth pest, even if nothing else can be done. Sir, so far as West Bengal is concerned, I think the policy should be to reclaim the smaller channels, not that these dying rivulets should be in such a condition as to flood and flush the surrounding areas at all times of the year, but that during the rains they should flood and flush the adjoining lands.

Sir, we all look forward with great interest as to how the Development Commissioner is going to take up the schemes for reclaiming these rivers. I admit that the Irrigation Department has had many sins of omission and commission in the past, but this resolution is of such a character that it cannot possibly be supported in view of the fact that it binds ourselves to the policy enunciated by Sir William Wilcocks. On the other hand, if this resolution is meant for the purpose of raising a loan for irrigation projects which will better the condition of the people, we on this side of the House are quite prepared to support it.

Maulvi SYED MAJID BAKSH: Sir, at the very beginning I acclaimed with joy, the sparklet of wisdom which the Hon'ble Member used while speaking on this resolution, *viz.*, where ignorance is bliss it is folly to be wise. Sir, we have been ignorant for centuries of the art of irrigation, of the engineering which has made the construction of railway, of the skill and intelligence that are required for safe traffic to go on, and for such ignorance we were blessed with flooding and flushing rivers bringing in their trains rich red silt and at the

same time making us healthy, depriving us of the terrible scourge of malaria and increasing our wealth. Sir, at an evil moment we became wise. We learnt that railways can be built in the interest of transport, not of ourselves but of foreign merchants, and railways were built across rivers choking the waterways for ever and leaving no possibility for the annual flooding of waters to keep these rivers living. At that moment began the policy of closing (I am speaking of Bengal only) the head waters of the Bhairab which is the same as Kapotakhya, of Jamuna and Ichhamati and that of others thereby closing the flow of annual current of waters or making them smaller and smaller by degrees till the three districts that are watered by them, namely, Nadia, Murshidabad and Jessore, became in the long run notorious for ill-health. Having done that we tried to grow wiser still.

(The Council was adjourned for 15 minutes.)

(After adjournment.)

Mr. PRESIDENT: His Excellency the Governor has ordered that the Council will sit to-morrow at 2-30 instead of 3 p.m.

Adjournment.

At this stage, on a count being taken, it was found that there was no quorum and the Council was adjourned till Tuesday, the 27th February, 1934, at 2-30 p.m., at Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Tuesday, the 27th February, 1934, at 2-30 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 92 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Bhairab Scheme No. II.

*92. **Maulvi SYED MAJID BAKSH:** (*a*) Is the Hon'ble Member in charge of the Irrigation Department aware—

(*i*) that the Nabaganga Cut at Chuadanga has been very successful; and

(*ii*) that the Nabaganga Cut was a scheme preliminary to Bhairab Scheme No. II?

(*b*) Is it not a fact that the flow of water in the Nabaganga has sufficiently justified the undertaking of Bhairab Scheme No II or any other scheme for the flushing of the river Bhairab below the town of Jessore?

(*c*) If the answers to (*a*) and (*b*) are in the affirmative, when are the Government undertaking a suitable scheme for flushing the Bhairab at the town of Jessore?

(*d*) Is it not a fact that the Nabaganga Cut has been effected at a far less cost than the original scheme supplementary to Bhairab Scheme No. II?

(*e*) Are the Government considering the desirability of working out a scheme for flushing the Bhairab at the Jessore town at a much lower cost and of consulting official and non-official experts for the purpose?

MEMBER in charge of IRRIGATION DEPARTMENT (the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim Chuznavi, of Dilduar): (*a*) (*i*) Yes.

(*ii*) The Nabaganga Cut is a scheme supplementary to Bhairab Scheme No. II.

(*b*) Yes.

(*c*) The member is referred to the answer given to starred question No. 12 asked by him this session on the subject of the Joynagar Scheme for flushing the rivers Bhairab and Kobadak.

(*d*) Yes, because the original proposals were simplified.

(*e*) Does not arise.

Maulvi SYED MAJID BAKSH: With reference to (*c*), will the Hon'ble Member be pleased to state whether he is aware that the bed of Kobadak is lower than that of Bhairab at Kotchandpur?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM CHUZNAVI, of Dilduar: Yes.

Maulvi SYED MAJID BAKSH: Will not therefore the Joynagar Cut take away all the water through Kobadak and not through Bhairab?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM CHUZNAVI, of Dilduar: If the hon'ble member would refer to the answers given to questions already asked about this matter, he will find that the matter is under very careful consideration of Government.

Khan Bahadur Maulvi AZIZUL HAQUE: Is it a fact that, because the Jessore District Board has not paid its contribution, therefore other schemes are being held up?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM CHUZNAVI, of Dilduar: No, but I am glad that the hon'ble member has supplied me with this information.

Maulvi SYED MAJID BAKSH: Is the Joynagar Cut part of Bhairab Scheme No. II?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM CHUZNAVI, of Dilduar: I am not prepared to say either yea or nay to that.

Maulvi SYED MAJID BAKSH: Is the Hon'ble Member aware that the Nabaganga Scheme cost less amount of money?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM GHUZNAVI, of Dilduar: Government are perfectly aware of all the facts to which the hon'ble member has referred to in his question.

Maulvi SYED MAJID BAKSH: In that case where is the answer to my question whether the Joynagar Cut Scheme forms part of Bhairab Scheme No. II?

The Hon'ble Alhadj Nawab Bahadur Sir ABDELKERIM GHUZNAVI, of Dilduar: The whole matter is now in a fluid condition and is being examined very carefully in the department.

GOVERNMENT BUSINESS

GOVERNMENT BILLS.

The Bengal Excise (Amendment) Bill, 1934.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I beg to introduce a Bill further to amend the Bengal Excise Act, 1909.

The Secretary then read the short title of the Bill.

The Presidency Small Cause Courts (Bengal Amendment) Bill, 1934.

The Hon'ble Mr. R. N. REID: I beg to present the Report of the Select Committee on the Presidency Small Cause Courts (Bengal Amendment) Bill, 1934.

Sir, I also beg to move that the said Bill, as reported by the Select Committee, be taken into consideration.

Sir, the Select Committee whose Report was unanimous have altered this Bill to a considerable extent, and I should like just to draw the attention of the House to a few of the more salient points of modification.

In clause 3 the new section 72B has been modified by the addition of a proviso—which refers to cases in which a court allows notice to be issued on the opposite party—to the effect that, while application would be received without payment, no notice shall be issued until payment has been made. In other words, the applicant does not have to pay a fee unless a notice is actually issued.

The next point refers to the new section 72C which relates to applications under section 38 of the Act, that is to say, application for a new trial. This also has been modified and restricted to the extent that

fees will be paid only in cases where notice is actually issued. There is also a proviso to the effect that a refund will be ordered in cases where a new trial is to be held.

Clause 4 is an important one and has been very considerably altered in the Select Committee. The original draft section was to the effect that section 73 of the Act should be repealed altogether. That section of the Act provides that when a suit is settled out of court before hearing, half of the fees which have been made up to that date may be refunded to the applicant. As the House knows, this Bill is an outcome of the Retrenchment Committee's Report, and the point on which this clause was based is the fact that these half fees which were refunded constitute a considerable sum of money and it was thought that perhaps this money might be saved to the general revenues. There was, however, a good deal of considered and informed opposition to this clause, and the Select Committee were not prepared to accept the total repealment of the clause. They have modified it, however, by substituting a somewhat different clause which enables half fees to be refunded under certain conditions. These conditions, as will be seen by a reference to the new section 73, are that the settlement must be notified within 21 days of the date fixed for entering appearance or within 21 days of the date appointed for showing cause in the case of proceedings under Chapter VII. There is also a second condition that application for refund must be made within 12 months after the date of such petition, subject to the discretion of the Chief Judge. The effect of the alteration, from the Retrenchment Committee's point of view, is to reduce the amount of money which might have been saved or obtained for Government in this way. But in view of the opposition, it was decided in the Select Committee that it would be better to modify the section to this extent.

The Select Committee has omitted clauses 5 and 6 of the original Bill.

Clause 5 was intended to bring the procedure in the Presidency Small Causes Court on the lines of the procedure followed in the *mufassal* courts. But the Select Committee thought that it was not desirable. Clause 6 which has also been omitted intended to allow the Local Government to vary fees not only under sections 71 and 72A but also under the new sections.

Clause 7 has also been omitted as being unnecessary. It is mainly consequential on the alterations to clause 4.

It will also be seen that some alterations have been made in the 5th Schedule. That was most carefully gone into by the Select Committee and they decided, as the House will see, to make a great many alterations and a certain number of improvements.

I think these are the main points to which attention should be drawn, and I therefore move now that the Bill be taken into consideration by the House.

Mr. PRESIDENT: Two amendments have been tabled for recommittal of the Bill. These may be taken up at this stage.

Dr. AMULYA RATAN CHOSE: I move that the Bill be recommitted with instruction to submit their report before the 30th June, 1934.

This Bill after it has been considered by the Select Committee has been modified to a considerable extent and it has to some extent removed the objectionable portions of the Bill. But, Sir, there are still objectionable portions which require to be further modified and therefore I hope, Sir, that if the Bill is recommitted to the same Committee, that Committee may again consider and submit the report for further consideration in view of the amendments that have already been tabled. Sir, the Presidency Small Cause Court is a court where suits are brought by litigants with a view to their prompt disposal, but instead of that according to this Bill I think the Presidency Small Cause Court will be converted into a court of records where suits are likely to be delayed. Payment of court-fees are recommended in several items of the proposed Bill; and if that be done, it is the considered opinion of a large section of the people that this will hamper speedy disposal of suits for which such a court is intended. Again, Sir, clause 73, although it has been modified, must still needs further modification. After a compromise it is required by the Act that the whole sum should be refunded. There are certain other sections which also require to be thoroughly considered; and for that reason, I think this Bill ought to be recommitted for further consideration. I do not think that there is any haste in passing this Bill to-day, because it is not a Bill which is of urgent nature, and if we wait for a couple of months more that will not be harmful to the cause. Therefore, I move that the Bill be recommitted

The Hon'ble Mr. R. N. REID: I beg to oppose the amendment that the Bill be recommitted. In the first place the mover of this amendment has proposed that the Bill be recommitted to the same Select Committee. I was on that Committee myself, and I am not at all certain that the members of that Committee would be inclined to go through the Bill again; and, secondly, I am perfectly certain that none of them would change their mind and make any alteration in their report. Thirdly, I submit that the mover of this amendment has not offered any reasonable excuse for such recommittal. There has not been any change in the principle of the Bill. The matter has been

thoroughly discussed and in fact the mover has not furnished any reason whatever for sending it back to the Select Committee. I submit, therefore, that no case has been made out why the Bill should not be considered by the House. I, therefore, beg to oppose the amendment.

The motion was put and lost.

The Hon'ble Mr. Reid's motion was then put and agreed to.

Clauses 1 and 2.

The motion that clauses 1 and 2 stand part of the Bill was then put and agreed to.

Clause 3.

Rai Bahadur Dr. HARIDHAN DUTT: I move that in clause 3, proposed proviso to section 72B be omitted.

Sir, my difficulty in the way in which this amendment is taken up must be explained. I am not against that portion of the Bill, but I have objection to the provisos which are underlined in the draft. I find in the proviso that applications referred to in item 17 are included and on turning to the draft Bill I find that at the end of No. 17 has been added what is ordinarily known as the omnibus clause and which includes things which are existing and which may exist or may be brought in. This has been added by the Select Committee in their wisdom. I cannot consent to this. Therefore, I have moved that the proviso may be deleted.

I hope I shall not be misunderstood. Sir, I am not objecting to the principle of the Bill which has already been accepted by the House, and I am not contending against the imposition of fees which will bring in some amount of money to the Government coffer. My objection is directed to those three lines of the proviso which has reference to certain things which come later on. If this proviso is allowed to go on, the result would be that many poor persons who have recourse to the Small Cause Court now along with the rich litigants will be very hard hit. It might result in a considerable reduction in a number of cases and it will ultimately affect the income of the court. I think the best course would be to repeal the proviso altogether. It was not in the original Bill. The Select Committee in their wisdom have introduced it. I thank the Select Committee members for their extraordinary intelligence and for adding something to the revenues of Government. But I feel that it might frustrate the object of the Bill.

The Hon'ble Mr. R. N. REID: Sir, I am afraid I must oppose the amendment of the Rai Bahadur. As he says, this motion by which he proposes to omit the proviso to the clause depends on the views which

the House takes on item No. 17 in the 5th Schedule, so I think that to consider this amendment now would be putting the cart before the horse. The Select Committee considered this point very carefully and they have not put in this proviso without due consideration. The point that was considered was that there are various applications not only of a trivial nature but also of an important nature which are not covered by the items enumerated in Nos. 1 to 16 of the Schedule, and it was held that it was quite reasonable that these also should be subject to the imposition of fees. If No. 17 is accepted—as I hope it will when we come to consider it—then naturally the proviso in section 72B, clause 3, must stand.

I gather that the mover of the amendment has no very great objection to the proviso by itself, and so it is not much use labouring the point any further. I oppose the amendment.

Rai Bahadur Dr. HARIDHAN DUTT: May I explain one or two points?

Mr. PRESIDENT: You cannot speak again.

The motion was put and lost.

Rai Bahadur Dr. HARIDHAN DUTT: I beg to move that in clause 3, proposed section 72C be omitted.

I understand that no appeal is allowed from any decree or order passed by the Presidency Small Cause Court. The only remedy to any party who may feel aggrieved is either to apply for a new trial under section 38 of the Act, or to move the Calcutta High Court in its Original Side. These are the two alternatives left to him. There are some reported cases in which it has been held that a party cannot come before the High Court without first applying for a new trial. A motion in the Original Side means employment of solicitors and counsel and other sundry expenses. The cost is certainly prohibitive, and only rich litigants can have recourse to it. So a new trial seems to be the only remedy open to moderate class litigants when the judgment of the trial court is against the weight of evidence or otherwise erroneous in law or fact, or for other similar reasons. If this remedy is going to be denied to them by imposing half of the institution fee there will be no check against such decisions where poorer litigants are concerned. It is also to be remembered that in many cases of the small cause court notes of evidence are not taken nor is a written judgment given, but under the Provincial Small Cause Court Act appeals from the decrees are allowed and orders are open to revision in the Appellate Side of the High Court where those appeals or motions are filed and heard and Advocates are allowed to appear. The cost is considerably less in comparison than the costs of the Original Side of the Court. Even in

all appeals, whether first or second, the appellants have not to pay any court-fee in respect of costs, but by the proposed clause, the applicants for new trials are required to pay court-fees in respect of costs as well. If the proposed clause is retained it would be better to repeal section 38 of the Act altogether, and the litigants ought to be plainly told that the decision of the trying court is final subject to the revision by the Original Side of the High Court.

That is the reason why I have been prompted to move that the clause be omitted altogether.

The Hon'ble Mr. R. N. REID: This clause was very carefully considered by the Select Committee, and it seemed necessary to them to modify it to a very considerable extent, and in doing so they were actuated to a great extent by the considerations which the Rai Bahadur has just put forward, in order to make it less harassing and less burdensome to litigants. I think it will be agreed that it is reasonable to charge a fee on the lines laid down in this clause for the applications to which it refers, and I fail to see that the mover of the amendment has produced such reasons in favour of the alteration that he proposes, as can be accepted by this House. I have to oppose the motion.

The motion was put and lost.

The motion that clause 3 stand part of the Bill was then put and agreed to.

Clause 4.

Rai Bahadur Dr. HARIDHAN DUTT: I beg to move that in clause 4 in proposed proviso (*a*) to section 73, lines 3 to 8, for the words beginning with "before or within twenty-one days" and ending with "for showing cause" the words "on or before the first hearing of the suit or proceedings" be substituted.

My point is that the practice of the Calcutta Small Cause Court is to fix at least 3 weeks for the date of appearance of the defendant or the opposite party as the case may be from the date of the filing of the suit or proceedings, and sometimes 4 or 5 weeks, where the defendant or the opposite party lives beyond the town of Calcutta. Where no compromise is ordinarily possible unless the two parties meet, summons or notice may be served on the day just preceding the day fixed for appearance. The party instituting the suit may not be easily accessible either for temporary or prolonged absence within three weeks from the date of appearance, and the agents or pleaders of such parties may very well say that without definite instructions from the principal as to the terms of compromise they cannot do anything, nor can they agree to a compromise or put down the terms of the compromise. So the section as proposed to be amended will remain practically a dead letter.

The practical result of the proposed change will be that there will be no refund of half costs. This will seriously interfere with the privilege which the people of Calcutta have been enjoying of having half cost returned after a compromise is affected between the two parties. This is a clause which is very important from the citizens' point of view. We find people quarrelling, and after quarrelling for a time they come to a settlement of their differences, and they go to the Court and ask for a refund of half the costs. This, I have found within my experience to lead to an amicable settlement being arrived at. In doing away with that, the time allowed is so limited that your good intentions will be frustrated by the way in which the Bill has been drafted.

That is my reason for putting this amendment.

The Hon'ble Mr. R. N. REID: This clause as modified was considerably modified compared with the original, the original intention being to repeal section 73 altogether. It was very carefully gone into by the Select Committee, and I may mention that on the Select Committee there were at least 3 or 4 gentlemen closely connected with the Presidency Small Cause Court who had had very ample experience in the working of this court. None of them ever suggested the difficulties which the mover of this resolution has put forward, and, on practical grounds, I think it must be evident from the reading of the clause that there need not be any such difficulty as the Rai Bahadur treated us to, in rural areas. The wording is "within twenty-one days after the expiry of the period fixed by the Court or the Registrar for entering appearance". It is obvious if the parties are inclined to think that there is a chance of compromise they will tell the Registrar of the Court, and he will give them ample time to arrive at their compromise within the period fixed. I do not think there is really anything difficult about this clause as settled in Select Committee. I oppose the motion.

The motion was put and lost.

The motion that clause 4 stand part of the Bill was then put and agreed to.

Clause 8.

Rai Bahadur Dr. HARIDHAN DUTT: I beg to move that in clause 8, item No. (*15*) (*b*) in the Fifth Schedule be omitted.

These applications have to be made by the plaintiff for properly constituting the suit and the record of the case where the opponent happens to be a minor. These are ordinarily the rules of procedure, and the party ought not to be saddled with costs in the shape of fees

on application. In such cases pending suits or proceedings some party or parties may die and there may be transfer. No separate fees ought to be paid or charged in such cases.

Khan Bahadur Maulvi AZIZUL HAQUE: I must say that I must oppose Dr. Haridhan Dutt because I think that having mislaid his original manuscript, he was speaking from an entirely different manuscript. The section is for permission to draw money from the court on the day of deposit. But we did not hear anything from him about that. It seems, he does not know much of the subject on which he is speaking; he has obtained his information from somebody else. I appreciated the Rai Bahadur championing the cause of the Shia community, but to-day he is championing someone else's cause on wrong materials; he has not been brieted well about the subject. In any case, the permission is for drawing money from the court on the day the deposit is made. Why should there be any difference between Calcutta and the *mufassal*. In the *mufassal* courts, we certainly have to pay court-fees on petition for drawing this money; so why should not Calcutta people pay as well? I oppose this amendment.

The Hon'ble Mr. R. N. REID: I do not think I need add anything to what the Khan Bahadur has said, except to say that I also oppose the motion.

Rai Bahadur Dr. HARIDHAN DUTT: I beg to move that in clause 8, item No. (17) in the Fifth Schedule be omitted.

Sir, I have already said what I had to say on this matter. I am opposed to the inclusion of an omnibus clause which includes anything and everything. I am not prepared to accept the addition of this clause which will help Government to extract money from the poor litigants in the small cause court.

The Hon'ble Mr. R. N. REID: I have nothing to add except to say that I oppose this amendment.

The motions were put and lost.

The motion that clause 8 stand part of the Bill was then put and agreed to.

Preamble.

The motion that the preamble stand part of the Bill was then put and agreed to.

The Hon'ble Mr. R. N. REID: I beg to move that the Presidency Small Cause Courts (Bengal Amendment) Bill, 1934, as settled in Council, be passed.

The motion was then put and agreed to.

The Bengal Nurses Bill, 1934.

The Hon'ble Mr. R. N. REID: I beg to present the Report of the Select Committee on the Bengal Nurses Bill, 1934.

I beg also to move that the Bengal Nurses Bill, 1934, as amended in the Select Committee, be taken into consideration.

The Bill as presented in this Council on the 10th January last has been subjected to a certain amount of alteration in the Select Committee, and there are one or two points to which I think I should draw the attention of the House.

The first point is the insertion of a new clause 24A on page 6 of the Bill. This has been inserted in order to check the issue of bogus or misleading certificates by institutions which have not been recognised by the Bengal Nursing Council which this Bill purports to set up. Recognised institutions will be under the control of the Council and there is no risk of their issuing objectionable certificates, but it was held that if nothing was included in the Bill to cover other institutions, there was a considerable danger of the public being victimised by persons who held certificates which in reality were of no value whatever. I may add that there is a similar provision, as regards the issue of certificates, in the Indian Medical Degrees Act, 1916, with which no doubt medical men of this House are familiar.

Then, clause 26 has been altered in this respect. As previously drafted, it prohibited unregistered persons from being employed in institutions which were maintained or supported by public funds with certain exemptions. On further consideration it was held that it would be better and more easily workable if the prohibition and exemptions were applied not to persons or individuals but to institutions, and it was really from the administrative point of view that this alteration was made. The object is the same but the method of carrying out the purposes of the clause has been altered.

Then, a new sub-clause has been added to clause 27 which is consequential on the new clause 24A and provides the necessary penalty for contravention of the provisions of clause 24A.

I do not think that the other alterations which were made by the Select Committee need be discussed at this point, and I may add that the Select Committee's report was unanimous.

Mr. PRESIDENT: Several amendments have been tabled to recommit this Bill.

Dr. AMULYA RATAN GHOSE: On a point of order, Sir. I want to oppose the consideration of this Bill.

Mr. PRESIDENT: You can do that when you move amendment No. 2 which stands in your name.

Dr. AMULYA RATAN GHOSE: I beg to move that the Bill be recommitted with instructions to submit their report by the 30th June, 1934.

I would have preferred to oppose this Bill totally, because I think that a Bill of this nature is not necessary in the present state of things in our province. It has been shown that a necessity has arisen as in the case of an Act that was passed some time ago—I mean the Bengal Medical Act of 1914. There is, however, much difference between the necessity which arose in those days for the registration of medical men as compared with the conditions that prevail now in relation to the nurses of our province. It is an admitted fact that we require the help of the nurses and midwives in a much larger extent than what we are now getting. But if a Bill of this nature is passed, it will have a restrictive effect upon the enthusiasm of those who come in for the training of nursing and the profession of midwifery. In Bengal it is well known that there is a scarcity of nurses because of the prevalence of the *purdah* system. The nurses and midwives are to be recruited from the womenfolk of Bengal, and we know how difficult it is to get a large number of women to take to this subject for the purpose of taking it up as their profession and avocation in life. Compelled by circumstances the womenfolk of Bengal take to this subject; but if so many restrictive legislations are passed, the weak enthusiasm that is now prevailing will be still further weakened, because of the school fees and other restrictions imposed by the law. There is also another thing that by legislation it is meant that these nurses and midwives should pass out of institutions which are recognised by Government and those who will not pass out of them will not have registrable qualification. But there are institutions which are not at present recognised by Government, although they are giving equally good training to the nurses and through them we are getting a larger number of trained nurses and midwives. If restrictions are put on them, we will not have those nurses and midwives who are now being trained in no less efficient institutions, e.g., the Chittaranjan Seva Sadan and the Calcutta Homeopathic Hospital. There are also other institutions in which nursing is taught but they are not recognised by Government. In view of these things I think this legislation should not be enacted now. If it is enacted at all, I think it should be enacted after considerable thought has been given to this matter. The Bill should be well considered by the Committee in certain aspects, such as the constitution of the Council. The Council which is at present going to be constituted is not so much to be approved of, as Government will nominate its President instead of giving the Council the privilege of electing their

own President. There are other aspects which should be considered also. No saving section has been provided in the Bill for those nurses and midwives who are at present practising or are in service after having passed out of institutions which are not recognised by Government. In these circumstances I think this Bill ought to be recommitted and the members of the committee should be given an opportunity of giving their second thought to this question before this legislation is passed. Then again there is the registration fee. At present the nurses and the health visitors or midwives are not required to pay any sum as registration fee. But in the proposed Bill the Council has been given the power to fix the registration fee. I suggest that there should be no registration fee at all in order to encourage people to take to this art of nursing and helping the patients. Even if there be any fee for registration, it should be so small that it will not cause any hardship on the applicants. Therefore to my mind the Council should not be given the power to fix the fee for registration. In view of these things I think that recommital of the Bill is necessary, and I commend my motion to the acceptance of the House.

Rai Bahadur Dr. HARIDHAN DUTT: I am sorry I rise to oppose the motion moved by Dr Amulya Ratan Ghose. I have been carefully listening to him, but I am unable to understand what he meant first of all by saying that the Bill is not necessary in the present state of things. Dr. Ghose is certainly junior to me, but he has sufficient amount of practice in Calcutta and in its surroundings and that for a sufficient length of time, to realise what is going on in the medical world. It was in 1914, Sir, that we had the Medical Registration Act, and this is the time when we are feeling the benefit of that Act, when quacks have disappeared or are fast disappearing, and we who pride ourselves as qualified medical men are getting the advantage of this Act. This was the beginning of some sort of regulation in the medical world of Bengal. Sir, nursing is an important component part of the medical profession. Nurses have long been neglected. Twenty years ago something was done for the medical profession, but since then what has been done with regard to nurses, health visitors and others who are included in this Bill? Nothing has been done. Have we no responsibility for them? Does Dr. Ghose contend that our profession will be complete and will make any impression unless we have the assistance of nurses, midwives and health visitors? Are they of less importance to the medicament of the people than the doctors themselves? During my long experience and in course of my inspection round the hospitals of Calcutta, I was really very much struck by the fact that doctors would be absolutely helpless without the co-operation and help which they receive from nurses, midwives and health visitors. We as medical men go to see a patient and may prescribe a thousand

bottles of medicines; but who are to administer them? It is the nurses. Doctors may treat typhoid cases and may prescribe a thousand and one precautionary measures; but who are to carry them out? It is the nurses. Without nurses, doctors are absolutely helpless and the effect of their treatment would be at least 50 *per cent.* less without the nurses. For the last 20 years, Sir, as I have already said, we have been thinking of doing the same thing towards the nurses as has been done towards the medical men in 1914; but we have silently slept over the matter. Now that Government have brought in a Bill with that end in view (although I do not contend for a moment that this Bill is perfect), should my friend come forward to propose a recommittal of the Bill and not give his wholehearted support to a measure of this nature?

My friend, Dr. Ghose, has said that it will have a restrictive effect on those who will come for training. I cannot understand this. I personally believe that the effect of this Bill would be rather quite the opposite.

At the present moment our sisters from the Indian community who come forward for training as nurses feel diffident in doing so, because they have no future assured to them. They learn nursing and earn 40 or 50 rupees a month but they have no established status in life. That prevents Indian ladies from taking to this profession. Give them a respectable position and status, assure them of their future success or assure them of the possibility of earning a decent sum of money, and you will find hundreds of our sisters coming forward to join the profession. Dr. Ghose might not be aware, but I find that in Calcutta there is already a stir among our Indian sisters who have been trained in higher education to adopt this profession. In the Chittaranjan Seva Sadan, which Dr. Ghose has cited, you will find there a pleasant sight—how Indian ladies are coming forward to work for the amelioration of sick patients—a sight unknown to us 20 years ago. After this bright example, how is it that a medical man who has experience of Calcutta can come forward and say that this Bill will restrict the training of nurses? It is rather quite the opposite, Sir, I can assure you. Once more I say, give them a status, give them a chance of earning their livelihood honestly by this profession and hundreds and hundreds of respectable Indian ladies who have got their training in schools and colleges will come forward and join the profession of nursing. Dr. Ghose has at the end of his speech said something about those who are already practising. What is going to be done about them? Might I draw my friend's attention to clause 18 (*b*) which says: "the following persons shall on payment of such fee as may be prescribed be entitled to registration under this Act, *viz.*, (*b*) . . . . who are already in practice at the commencement of this Act and are not entitled to registration under clause (*a*), subject to such conditions and restrictions as may be prescribed."

Here again I draw his attention to the word "prescribed" and to clause 3, which lays down that a Council, called the Bengal Nursing Council, will be established. It is this Bengal Nursing Council which will lay down the conditions and restrictions and not the members of the Bengal Legislative Council. Not anybody else but they themselves will lay down these conditions and restrictions. These conditions and restrictions would be laid down by them, and subject to these conditions and restrictions those who are already in the profession will be included although they may not have registrable qualification. I believe the Bill, so far as it goes, is satisfactory, though I do not for a moment suggest that it is an ideal one. There is another point and that is—what will be the fate of other institutions training nurses? Might I ask Dr. Ghose to tell me what would be the state of the medical profession if anybody and everybody were allowed to create medical men, which was the state of affairs 20 years ago? Twenty years ago there was one school at Bowbazar and another at Shambazar and still another at Entally, all creating medical men and giving them diplomas of M.B. and M.D. and so on. All that has been stopped by the Medical Registration Act which now penalises these things. This Bill is the beginning of the very same thing in respect of nurses. Sir, why should we allow an obscure quarter of Calcutta to create nurses and health visitors, etc., and give them degrees or titles? Why should we not educate nurses by methodising their training and bringing them under proper control and giving them training in a scientific way? So I think it should be the duty of us all, sitting here, to give a start to the training of nurses as visualised in the Bill and so the Bill should be accepted by the House.

Rai Bahadur KESHAB CHANDRA BANERJI: Sir, I had no intention of speaking on this motion. But I am surprised to find that a medical practitioner of Dr. Ghose's type should ask for the recommittal of the Bill to the Select Committee. The recommittal of the Bill would mean shelving it indefinitely. But I say indefinitely because nobody knows whether Dr. Ghose would again move a similar motion in a subsequent session for the recommittal of the Bill. The members of the Select Committee have bestowed their very careful consideration on the provisions of the Bill and I do not think that reference of the Bill to the Select Committee again would help matters very much. I am speaking from my experience of the local bodies in the *mufassal*, for instance, district boards, municipalities, local boards and union boards. It is a well-known fact that in the *mufassal* there is a large number of untrained and unqualified *dhais* and nurses who are a menace to society. They have not the necessary qualifications nor the training to do justice to their profession. If we carefully look into the statistics and figures we find that the number of deaths resulting from unsatisfactory handling of women patients is considerable. Sir,

in the *mufassal* there are many private medical institutions which turn out unqualified medical practitioners or quacks, if I may say so, every year. I feel that such institutions do not serve any useful purpose. They are labouring under great disabilities also. In the first instance they have not got the necessary funds to provide the required number of beds for medical students: they have not facilities for procuring dead bodies for purposes of dissection: there are no satisfactory arrangements for clinics: these are the disabilities under which medical schools in the *mufassal* suffer. I think the people are already realising the importance of improved medical assistance and the time has come to take steps for the proper registration of nurses and midwives. That is all that I want to say on this motion, and I hope Dr. Ghose in the plenitude of his wisdom will withdraw the motion he has thought fit to move.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I support the amendment moved by Dr. Ghose. Well, it would be for the House to make up its mind when one doctor is in favour of recommittal and another is against recommittal. I am not here to go by the opinion of one doctor or another, but I would like to point out how this measure is looked upon by the public. So far as I am able to judge, this measure is looked upon with suspicion. Sir, my friend asks me suspicion about what: well, the suspicion is about the control by the Government, a Government who have come to be looked upon with suspicion and distrust. Sir, it is apprehended in certain quarters that this measure is going to be a check on the recruitment of Indian nurses in this country, that this measure is meant to restrict the nursing profession to a certain class of people. Sir, in recent times there has appeared an increasing tendency among the Indian ladies to take to this profession, and if too much rigour and control is exercised naturally there will be a tendency not to join this profession. So far as Indian ladies are concerned, I admit that they do not get regular training in institutions such as it is the intention of the Government to give. But it is not due to lack of interest but rather to the absence of such training institutions. The position in the country is this: that it is not the question of employing quacks as nurses or ill-qualified nurses, but it is a question of finding nurses at all. In many institutions it happens that nurses have to be taken in because no trained nurses are available and some sort of nurse is better than no nurse at all. The immediate effect of this legislation will be that many of the institutions will have to go without any nurse at all, because they have not got trained nurses nor have they any arrangements for getting nurses trained. If the Government is serious and if they want to follow the right course, it would be for them to establish an institution for training first and then bring in legislation of such a restrictive character. Then, again, so far as the control is concerned, it is intended to vest the control

in the hands of the people who follow the Allopathic system of medicine. As there are other systems of medicine, I do not understand why any Ayurvedic or Homeopathic hospital nurses should get qualified in Allopathic system of education. Under such circumstances, I think Government will be well advised to proceed with this measure with caution. I do not suggest that by recommitting this Bill to the Select Committee any improvement is possible, but what will happen is that the country will get more time to consider the matter and to make suggestions which may be workable and which may not lead to any friction.

The Hon'ble Mr. R. N. REID: Mr. Shanti Shekhareswar Ray has directed his words and his gaze on me with such concentration that I feel bound to explain that I am not promoting this Nurses' Bill in my capacity as Hon'ble Member in charge of Police, and I really do not see how we can possibly use it as an instrument of repression. I deprecate these suggestions of suspicion and distrust from that quarter of the House. But still I do feel bound to say that I can see no possible means or no possible ground for believing that there is in this Bill anything except a real and genuine intention to improve the quality of our nursing profession in Calcutta and also providing the nurses themselves with certificates and a system of registration which will improve their own status. I do not think we need spend very much time over the amendment of Dr. Ghose. It was dealt with in an able way by a fellow doctor, Rai Bahadur Dutt, and I think it is perfectly clear that the motion to commit the Bill is purely one to ensure further delay: tactics which the mover of this amendment employed only in August last when he put forward a motion and spoke on it that the period for which the Bill should be circulated for opinion should be extended to four months. The Bill was introduced and circulated for opinion last August. It was again brought before the House in January on a motion for reference to the Select Committee. It was thoroughly discussed on both occasions and has been further thoroughly discussed in the Select Committee. I suggest to the House, Sir, that there is no possible reason why we should not proceed to consider it. I beg, therefore, to oppose the motion that the Bill be recommitted.

Dr. Amulya Ratan Ghose's motion that the Bill be recommitted with instruction to submit their report by the 30th June, 1934, was put and lost.

The Hon'ble Mr. Reid's motion that the Bengal Nurses' Bill, 1934, as reported by the Select Committee, be taken into consideration, was then put and agreed to.

Clauses 1 to 3.

The motion that clauses 1 to 3 stand part of the Bill was then put and agreed to.

Clauses 4 to 11.

Mr. PRESIDENT: I think the House will agree with me when I say that we should leave out amendments 6 and 7 for the time being and take them up when the other remaining amendments under clause 4 are disposed of.

Babu KHETTER MOHAN RAY: Mr. President, Sir, before I move this amendment, I beg to submit that amendment No. 27 is correlated with this amendment. I want to omit sub-clause (*a*) and in its place I want to substitute "the President may be elected by the Council."

Mr. PRESIDENT: But that is a different matter. You need not mix up the two.

Babu KHETTER MOHAN RAY: I beg to move that clause 4 (*a*) be omitted. The object of moving this amendment is to have the President elected by the Council itself. Sir, in these days where such a constitution is established, the President should be elected by the Council itself; and as the term of the Council is for three years only, I think the power of electing the President should be given to the Council itself. Democratic principle should be introduced in a Council like this. With these words, I beg to commend my amendment for the acceptance of the House.

Rai Bahadur KESHAB CHANDRA BANERJI: Sir, I rise to support the amendment. It is proposed that the President should be appointed by the Local Government. When it is going to be a democratic body, I do not think the President should be nominated, but he should be elected from among the members who will constitute the Council. There are many eminent men on the Council. Most of them are qualified medical people and one of them may be elected as President. So, I do not see any reason why Government should appoint the President. With these few words, I support the amendment.

The Hon'ble Mr. R. N. REID: Sir, I beg to oppose this amendment. The clause by which the President of the Nursing Council is to be appointed by the Local Government is based on what I believe is a very good precedent, that is the similar case in the Bengal Medical Council. Section 4 of the Act under which that Council is constituted, the Bengal Medical Act, lays down that the President is to be nominated by the Local Government, and this Bill has in some respect been based

on that Act. I understand that the system by which the Bengal Medical Act has a President nominated by the Local Government has worked very satisfactorily and very smoothly. There are obvious advantages in having an official President who can work in close contact and harmony with the Medical Services and there is this advantage also that with a President of that type, you are much more likely to have that continuity in administration, which after all is a very important point when you are administering an Act of this sort. Therefore, Sir, I am unable to see that this motion is really one that should be accepted by this House. The matter was well considered by the Select Committee. They decided after careful consideration that the thing should stand as it is. I, therefore, oppose the motion.

The motion was put and lost.

MUNINDRA DEB RAI MAHASAI: Sir, I formally beg to move that clause 4 (*e*) be omitted.

Sir, I fail to understand why the Surgeon-Superintendent of the Presidency General Hospital will be an *ex-officio* member, while its matron is going to be another *ex-officio* member.

The Hon'ble Mr. R. N. REID: I found a little difficulty in catching what the member said. I formally oppose the amendment.

The motion was put and lost.

Babu KHETTER MOHAN RAY: Sir, this amendment and amendments 13, 15, 16, 18, 21, 22 and 23 are of the same character, that is to say, about the constitution of the Council under clause 4. May I have your permission to move all these amendments together?

Mr. PRESIDENT: You better move this one first.

Babu KHETTER MOHAN RAY: I beg to move that clause 4 (*g*) be omitted.

There are nine *ex-officio* members proposed to be included in this Council. I think in a Council like this so many *ex-officio* members should not be allowed to sit. These nine members are considered experts in these matters. Too many experts will spoil the constitution. If five are *ex-officio* members and five are outsiders—such as the Principal, Medical College, Calcutta, the Director of Public Health, Bengal, the Principal, Carmichael Medical College, Calcutta, the Surgeon-Superintendent, Presidency General Hospital, Calcutta, and the Lady Superintendent of Nursing, Medical College Hospitals, Calcutta—I do not see why the Superintendent, Dufferin Hospital, Calcutta, the Nursing Superintendent, Dufferin Hospital, Calcutta, the Matron, Presidency General Hospital, Calcutta, and the Lady

Superintendent of Nursing, Sambhu Nath Pandit Hospital, Calcutta, should be included in it, and if their opinion is required on any matter they may be consulted as experts. It is a rare thing, Sir, that so many experts should be crowded together in a single body. Sometimes the experts will work from the standpoint of nursing as a profession but not from the point of view of the people. I say that some popular element should be introduced in the Council. I have other amendments by which I shall propose that some popular element should be introduced in the Council. Therefore, I say that such a large number of experts should not be included in the Council as *ex-officio* members in the constitution of the Council. With these remarks I commend my motion to the acceptance of the House.

Dr. AMULYA RATAN GHOSE: Mr. President, Sir, in supporting Mr. Ray's motion I beg to point out that the Council is going to be formed as proposed in the Select Committee's report which includes the Superintendent, Dufferin Hospital, and the Nursing Superintendent, Dufferin Hospital, Calcutta. Both come from the same institution. If you take away one, of course the idea of representing one from the Dufferin Hospital will be there, and the vacancy caused by the omission either of the Superintendent, Dufferin Hospital, or of the Nursing Superintendent, Dufferin Hospital, Calcutta, might well be compensated by one taken from the Chittaranjan Seva Sadan. As in a later amendment, it will be found that a proposal has been tabled for the inclusion of the Lady Superintendent of the Chittaranjan Seva Sadan; and the proposal is that the Superintendent of the Dufferin Hospital should be omitted, in that case the accommodation might be made for the Lady Superintendent of the Chittaranjan Seva Sadan, I think the purposes of the Bill will not be defeated. At the same time it will be an improvement to a certain extent, and it will be more acceptable to this legislature.

Rai Bahadur Dr. HARIDHAN DUTT: I have to point out that the Bill has been framed on information available to the present body who were responsible for the Bill, and in deciding on the component portion of the Council, we had to look round and see what was available in Calcutta. So far as I have been able to ascertain the most important bodies which train nurses are under the control of the Surgeon-Superintendent of the Presidency General Hospital and of the Medical College authorities, and next to them comes the Superintendent of the Dufferin Hospital, and a large number of nurses are trained in the Dufferin Hospital which is situated near Sealdah in Calcutta. Others too come and such bodies as the Calcutta Hospital Nurses Association, etc., are more or less controlled by the Lady Superintendent and the Surgeon-Superintendent of the Presidency General Hospital, Calcutta. If we leave them out, it is very difficult to find

out how we can form the component portion of the Nursing Council. My friend speaks of the Chittaranjan Seva Sadan; this is fast growing in importance, but I am not aware that they have got sufficient arrangements to train nurses by which they can compete with the Dufferin Hospital, or the Hospital Nurses Association of Calcutta. What I am suggesting is, let us be satisfied with the present constitution, but at the same time I hope that in 4 or 5 years' time our successors in this Council will be able to bring in a short Bill to introduce changes to suit the present requirements of that time. It cannot be done now; I am not aware of any important body at the present moment existing in Calcutta who can take up the control of the training of nurses. I know of institutions which are growing up, but I must admit that they have not been able to attain that importance which the Dufferin Hospital or Nurses Association or the Presidency General Hospital or the Medical College have attained. That is the reason why I must say that we have to accept the situation and wait for some years and our successors may introduce necessary changes later.

MUNINDRA DEB RAI MAHASAI: In spite of the arguments put forward by Dr. Dutt, I do not find any reason why two members should come from the Medical College and again two should come from the Dufferin Hospital, and two from the Presidency General Hospital. There is no reason why we should not reduce these numbers so that members from other non-official institutions may be included. There are many such institutions in Calcutta.

The Hon'ble Mr. R. N. REID: The Rai Bahadur has explained very clearly his reasons why these four ladies are included on the proposed Nursing Council. They are put in in an endeavour to obtain the best and most informed information and advice that we can obtain on the subject of nursing. All four of these, (*g*), (*h*), (*i*) and (*j*) are ladies who are closely connected with nursing and are consequently in the best position to advise the Council on general matters of nursing, and in particular on the point of view of the nurses themselves. If these are omitted the Council will be losing the best advice and the most important advice that they can get. The Chittaranjan Seva Sadan was mentioned. That is an excellent institution, but as the Rai Bahadur says it is still growing and has not reached the stage at which they can give the full training which it is proposed the Nursing Council will have to demand before they are permitted registration. It is not, at present recognized, I believe, by the State Medical Faculty. Of course there is no reason why later on it should not be recognised, and also why the constitution of this Council should not be changed, but as things are at present, I am afraid I must oppose the motion.

Babu Khetter Mohan Ray's motion was put and lost.

Babu KHETTER MOHAN RAY: I beg to move that clause 4 (*h*) be omitted.

Dr. AMULYA RATAN GHOSE: I beg to move that for clause 4 (*h*) the following be substituted, namely:—

"(*h*) Matron, Howrah General Hospital."

Clause 4 (*h*) means the Nursing Superintendent of the Dufferin Hospital, Calcutta. A little while ago a bright picture was placed before us by Dr. Haridhan Dutt about that Superintendent——

Mr. PRESIDENT: You may move your other motion as well and make one speech.

Dr. AMULYA RATAN GHOSE: Yes. I move that in clause 4, after sub-clause (*j*) the following be inserted, namely:—

"(*jj*) The Lady Superintendent of the Chittaranjan Seva Sadan, Calcutta."

I was rather surprised that Dr. Haridhan Dutt, who drew a very bright picture of the Chittaranjan Seva Sadan, was so reluctant to give a place to the Lady Superintendent of this institution in place of the Superintendent of the Dufferin Hospital, and he has given his reason that the representation of that hospital is very necessary. I admit that it is necessary. This is a good institution which is giving the best training, but I do not see any reason why this institution should be represented so largely and why others should be ignored wholly. The Dufferin Hospital has got two representatives on this Council, the Superintendent of the Dufferin Hospital and the Nursing Superintendent of the Dufferin Hospital. The Rai Bahadur has not given any reason why one institution should have two representatives and others should be deprived. I do not see any reason for this. Babu Khetter Mohan Ray has moved a similar motion; he was defeated. I now propose that the Nursing Superintendent of the Dufferin Hospital should be deleted and in her place one other institution should be represented. The Rai Bahadur has stated that the Chittaranjan Seva Sadan or a representative of that insitution has not come up to the standard as would be welcomed by the Rai Bahadur. But I request him, and I will see what he has to say about the Matron of the Howrah General Hospital. My proposal is that the Matron of the Howrah General Hospital should be given a place in the Council in place of the Nursing Superintendent of the Dufferin

Hospital. That hospital is already represented by the Lady Superintendent, and if that Nursing Superintendent be not there, the Council will not suffer from the wise advice of the representative of that particular hospital. But there is another hospital which is no less important, the Howrah General Hospital, and the Matron of that hospital should be accommodated on this Council. With these words I commend my motion to the acceptance of the House.

The Hon'ble Mr. R. N. REID: Sir, as regards Babu Khetter Mohan Ray's motion that clause 4 (*h*) be omitted, that has already been dealt with in connection with the previous motion on clause 4 (*g*), in which I explained that the only point in putting this particular individual on the Nursing Council was that she was fully acquainted with nursing and was in daily contact and having experience of it.

As regards Dr. Ghosh's amendment that in clause 4 (*h*), the following be substituted:—"The Matron, Howrah General Hospital." The answer to that is similar. The Howrah General Hospital does not train nurses, and what we want on this Nursing Council is persons who are in close contact with the training of nurses, and not the mere general working of a hospital, which of course includes the utilisation of nurses.

The motions were put and lost.

Babu KHETTER MOHAN RAY: With your permission, Sir, I beg to move both the amendments standing in my name, i.e., Nos. 15 and 16:—

"that clause 4 (*i*) be omitted," and

"that clause 4 (*j*) be omitted."

Dr. AMULYA RATAN GHOSE: In support of Mr. Ray I rise to say that the Hon'ble Home Member has told us that only the institutions which are imparting the training of nurses are taken into consideration to represent those institutions on this Council. Mr. Ray has proposed that the Matron of the Presidency General Hospital and the Lady Superintendent of the Sambhu Nath Pandit Hospital should be on the Council. May I inquire whether nurses are also trained in the Sambhu Nath Pandit Hospital? (A voice: Yes they are.) And also if they are not trained from there I do not understand why this post should be there and why some other institutions cannot be taken in? Now about the Matron of the Presidency General Hospital there is also another *ex-officio* member from the same hospital. Regarding the Matron I have got nothing to say, but regarding the Lady Superintendent of the Sambhu Nath Pandit Hospital, if no nurses are trained there, then I do not think—(A voice: they are.) Then

of course I do not say anything. But as regards the Lady Superintendent of Nursing, Sambhu Nath Pandit Hospital, I should like to point out that no nurses are trained in that hospital.

The Hon'ble Mr. R. N. REID: They are trained there.

Dr. AMULYA RATAN GHOSE: Then of course I have nothing to say.

The Hon'ble Mr. R. N. REID: I beg to oppose both the amendments.

The motions were then put and lost.

Babu KHETTER MOHAN RAY: I beg to move that in clause 4, after sub-clause (*j*), the following be inserted, namely:—

"(*jj*) The Lady Superintendent of the Chittaranjan Seva Sadan, Calcutta."

Sir, from what we have learnt and from the testimony of Rai Bahadur Dr. Haridhan Dutt there is no doubt that the Chittaranjan Seva Sadan is a growing institution where nurses are trained. I do not see why this institution should be left out of the constitution of the Council when every other institution where nurses are trained have been represented. I think it is fair that the Chittaranjan Seva Sadan should be represented on the Council which we are going to establish under this Bill.

Rai Bahadur Dr. HARIDHAN DUTT: May I draw my friend's attention to sub-clause (*n*)? He will find there that provision has been made for two persons to be appointed by the Local Government of whom at least one shall be appointed to represent institutions for the training of nurses, midwives and health visitors. So, the case of the Chittaranjan Seva Sadan is not so hopeless and helpless as my friend thinks it to be. The Chittaranjan Seva Sadan will be able, whenever the occasion arises, to send a representative on the Board under clause 9.

Dr. AMULYA RATAN GHOSE: Sir, I know a large number of nurses get their training in the Chittaranjan Seva Sadan and those nurses are employed either in the same hospital or in other hospitals wherever their services are requisitioned. As regards the other institutions, their places have been kept reserved on the Board as *ex-officio* members. There is no knowing whether Government will take a representative from the Chittaranjan Seva Sadan under sub-clause (*n*) as pointed out by Rai Bahadur Dr. Haridhan Dutt, but I think it will be doing an equitable justice if a place is kept reserved for

that institution as has been done in the case of other institutions of a similar nature under Government control. By reserving a seat for the Lady Superintendent of the Chittaranjan Seva Sadan, I think it would be doing justice to that institution which is manned and managed by private gentlemen of very high reputation. I therefore propose that instead of mincing matters it would be in the fitness of things to accept the proposal, and that will show the earnestness and sincerity on the part of Government.

Mr. SHANTI SHEKHARESWAR RAY: I support the amendment moved by Babu Khetter Mohan Ray. To-day the Hon'ble Member in charge of the Bill has accepted the opinion of Rai Bahadur Dr. Haridhan Dutt on many occasions in this matter. As a matter of fact the Rai Bahadur is a tower of strength to the Hon'ble Member so far as this Bill is concerned. The Rai Bahadur has no objection to the inclusion of the Lady Superintendent of the Chittaranjan Seva Sadan as a member of the Council. He thinks that there can be no objection in finding a seat for her and what he suggests is that Government should nominate her under sub-clause (*n*). I think the Hon'ble Member can hardly give any assurance that one of the two persons referred to in sub-clause (*n*) will always be the Lady Superintendent. As a matter of fact we know what sort of people are nominated by Government. Government, as we are aware, do not make these nominations on merits. It is more or less apparent that people who can take the side of Government get into such bodies through Government nomination. As a matter of fact these appointments through Government nomination are looked upon as patronage by Government, which they bestow on those who support Government in their actions. So far as this amendment is concerned, I think it will have the support of the whole House, as we are all aware that the Chittaranjan Seva Sadan has come to occupy a great place in the country. It is looked upon with pride by all of us. It is an institution that has been doing great service and as Dr. Ghose has told us it is supervised by very competent men and it is a well-organised body. Therefore, there can possibly be no objection on the part of Government to have the Lady Superintendent of that institution on the Council. The only objection that Government can raise I can anticipate—it is not a Government institution. Government always fight shy of non-official institutions. Perhaps Government think if they take the Lady Superintendent on to the Council, it would be a dangerous thing, because she is the head of a non-official institution. From their point of view importance is to be attached only to Government institutions and henchmen of Government.

The Hon'ble Mr. R. N. REID: Sir, the answer to this amendment is quite simple and has been repeated several times already in various

quarters of the House. The Chittaranjan Seva Sadan is, as I said before, an excellent institution, but as far as nursing goes, it does not train nurses up to the standard which would qualify them to be registered. Secondly, it has not been recognised by the State Medical Faculty. There is no question of its being a private institution or a Government institution. It is merely a question of quality. If it did teach nurses up to the requisite standard, I have no doubt that it will have a representative on the Council, but as matters stand at present it will not be reasonable to have a representative of that institution on the Council. For this reason I oppose the amendment.

Babu Khetter Mohan Ray's motion being put, a division was taken with the following result.

AYES.

Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Chaudhuri, Dr. Jogendra Chandra.
Chaudhuri, Babu Kishori Mohan.
Choudhury, Maulvi Nurul Absar.
Fazlullah, Maulvi Muhammad.
Ghose, Dr. Amulya Ratan.
Hoque, Kazi Emdadul.
Huq, Mr. A. K. Fazl-ul.
Maiti, Mr. R.
Mittra, Babu Sarat Chandra.
Quasem, Maulvi Abul.
Rahman, Maulvi Azizur.
Rai Mahasai, Manindra Deb.
Ray, Babu Khetter Mohan.
Ray, Mr. Shanti Shekhareswar.
Raut, Babu Hoseni.
Samad, Maulvi Abdus.
Sen, Rai Sahib Akshoy Kumar.
Singh, Srijut Taj Bahadur.

NOES.

Ahmed, Khan Bahadur Maulvi Emadeddin.
Armstrong, Mr. W. L.
Ashworth, Mr. C. B.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Cohen, Mr. D. J.
Dutt, Mr. S. S.
Dutt, Rai Bahadur Dr. Haridhan.
Edgley, Mr. H. G. A.
Faroqui, the Hon'ble Nawab K. S. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ghose, the Hon'ble Mr Charu Chunder.
Gurnavi, the Hon'ble Aldaj Nawab Bahadur Mr Abdolkarim, of Dhdusr.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Gell, Col. D. P.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Kasem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Mr. Razaur Rahman.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Nag, Reverend B. A.
Nag, Babu Suk Lal.
Nazimuddin, the Hon'ble Mr. Khwaja.
Rahoom, Mr. A.
Rahman, Mr. A. F. M. Abdur-
Ray Chowdhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Ray, Mr. Sarat Kumar.
Ray, Mr. S. N.
Sadatullah, Maulvi Muhammad.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Mr. B. R.
Townend, Mr. H. P. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. deS.
Woodhead, the Hon'ble Mr. J. A.

The "Ayes" being 20 and the "Noes" 44, the motion was lost.

(The Council was then adjourned till 5-30 p.m.)

(After adjournment.)

Dr. AMULYA RATAN GHOSE: I beg to move that in clause 4 after sub-clause (*n*), the following be inserted, namely:—

"(*o*) The Health Officers of the Calcutta Corporation and the Howrah Municipality, respectively.

(*p*) One representative from the Calcutta Corporation to be elected by the Councillors and one from the Howrah Municipality to be elected by the Commissioners of that municipality."

In order to make the Council a very representative one, as it relates to a matter which concerns the whole of our province, I consider it necessary that this Council should be a very representative body. Sir, it is known to all of us that the Corporation of Calcutta have under its employ a very large number of nurses, health visitors, etc., so is the case with the Howrah Municipality also, and as the town of Howrah and Calcutta Corporation are quite close to the office of the Council which might be later on selected, it is very desirable that the Health Officers of these two corporate bodies and also two representatives to be elected from these bodies, should be on the Council. Sir, the Tramways Company's Advisory Board, the Calcutta Electric Supply Corporation's Advisory Board and the Railway Advisory Board—all such institutions have taken into their Council representatives from such important local bodies as the Municipality of Howrah and the Corporation of Calcutta, and in a matter which affects primarily these two institutions, it will be highly desirable that the Health Officers of these two bodies who are highly qualified medical men should have a place in the Council; as also one representative each from these self-governing institutions. With these observations, I commend my motion to the acceptance of the House.

Dr. NARESH CHANDRA SEN GUPTA: I thoroughly sympathise with Dr. Ghose in his desperate effort to provide for some sort of representation for voices which Government have decided should not be heard. But I would ask him to look at the constitution as has been framed under clause 4. I should say, Sir, that it is an eloquent constitution. The constitution shows exactly what it means and what it aims at. It has been overweighted with a particular interest and other interests are not wanted there. If they were, I should say that, so far at any rate as the Health Officer of Calcutta is concerned and so far as the number of training institutions started under the auspices of the Calcutta Corporation at a time when there was no provision for training of nurses is concerned, well, Sir, so far as that goes, Government should have welcomed Dr. Ghose's suggestion. But I do not think that Dr. Ghose stands any chance with persons who have been responsible for framing a constitution like this.

The Hon'ble Mr. R. N. REID: The first portion of this amendment is to put the Health Officer of the Calcutta Corporation and the Health Officer of the Howrah Municipality, respectively, upon the Nursing Council. It is true that the Director of Public Health is on the Council already, and it is a little difficult to see why he should be assisted also by the Health Officers of these two bodies. It has been decided that the Director of Public Health should be on the Council because he is concerned directly with the training of health visitors and in connection with the Red Cross Society, and also in connection with the training of midwives in the *mufassal*, but it is difficult to see how any additional benefit will be obtained by putting on the Council the Health Officers of the Calcutta Corporation and the Howrah Municipality. There is one practical point and that is that this Council is already a big body and it will become unwieldy if you add too many extra members to it. Then the second point is the suggestion that there should be one representative from the Calcutta Corporation and one from the Howrah Municipality to be elected by the Commissioners of these bodies. My answer to that is that neither the Calcutta Corporation nor the Howrah Municipality is primarily interested in the training of nurses. They are both employers of nurses; but the object of this Bill is to see that the class of nurses that is to be employed is all good class of nurses, properly trained and qualified, and then they will be employed without any difficulty or any suggestion that they are not fit for their job. So there is no real reason why those two bodies should be represented on the Nursing Council. I think sufficient has been said to oppose the amendment.

Dr. Amulya Ratan Ghose's motion was put and lost.

Mr. H. P. V. TOWNEND: Sir, may I draw you attention to amendment No. 26 which runs as follows:—

"Dr. Amulya Ratan Ghose to move that clause 4 be renumbered as clause 4 (*1*) and after that clause as renumbered the following be added, namely:—

'(*2*) the Council as will be constituted under this section shall elect from one of its number as President of the Council and a Vice-President may, if considered necessary, be elected in the same manner.' "

With regard to this motion, Sir, the House has retained the provision that the President should be appointed by the Local Government. But this amendment suggests that he should be elected. I should think therefore that this amendment does not arise.

Dr. AMULYA RATAN GHOSE: May I point out, Sir, that this amendment does not deal with the election of the President only but with the election of a Vice-President also, as contained in the second portion of the amendment.

Mr. PRESIDENT: You hold that no provision has yet been made with regard to the election or nomination of a Vice-President. Is that your point?

Mr. H. P. V. TOWNEND: It may be that, Sir, but it might be dealt with under powers for making regulations under this Act.

Mr. PRESIDENT: But his point is that up till now the House has not carried any amendment relating to the appointment or election of a President or Vice-President. The clause itself has not yet been carried. The House made certain attempts to omit or amend that clause and those motions have failed; but so far as the clause itself is concerned it has not yet been carried by the House, and in view of that Mr. Townend will perhaps agree with me when I say that this amendment is not out of order. On the other hand, it is indisputable that no amendment with regard to the election of a President or Vice-President has been negatived by this House. That is an additional argument in favour of Dr. Ghose. In any case, clause 4 has not yet been carried by the House. I allow Dr. Ghose to move his amendment.

Dr. AMULYA RATAN GHOSE: Sir, I beg to move that clause 4 be renumbered as clause 4 (*1*) and after that clause as renumbered the following be added, namely:—

"(2) the Council as will be constituted under this section shall elect from one of its number as President of the Council and a Vice-President may, if considered necessary, be elected in the same manner."

It has already been pointed out that in these days of democracy the President ought not to be appointed but the Hon'ble Member in charge of the Bill has pointed out that there is a precedent, namely, the Bengal Medical Act, in which the appointment of the President by Government has been provided, but, Sir, that precedent has become too old. That was done 20 years ago. In those days nobody conceived of the present-day advancement; and the argument that the precedent is there should not be the guiding principle of the present-day legislation. What was possible 20 years ago should not be made possible 20 years hence. The analogies in these cases are not always wholesome. Sir, I know that this Bill has been drafted in accordance with the provisions of the Bengal Medical Act, but the Bengal Medical Act was introduced with a different object altogether. There were too many private medical institutions which used to give various kinds of diplomas to the passed students unrecognised by the Calcutta University. No such thing happens in the case of nurses, midwives or health visitors. In those days there were the Medical

College and the Campbell Medical School, and so there was already provision for the medical education of doctors, that is why the Bengal Medical Act was introduced to prevent private bogus schools from granting diplomas. But there are no such things with regard to the education of nurses, midwives and health visitors. Therefore, what was thought right in those times should not be made a precedent and should not be followed at the present time. So, I propose that the President of the Council ought to be elected by the members of the Council. What is the harm if the President is elected? Of course the Council as it is proposed to be constituted consists mostly of medical men taken from the Medical Service of Bengal and if the President is elected even by the Council, there is every likelihood that one of the members of the Council who belongs to the Medical Service would become the President. I cannot see any reason whatsoever why there should be any objection to the proposal that the President should be an elected President.

Now, I come to the question of Vice-President. Supposing, Sir, the President is ill or is absent from attending meetings of the Council for some reason or other: what will happen if there is no provision for a Vice-President. My objection in moving this amendment is to make a provision to the effect that if it is found necessary the Council will elect a Vice-President in the same manner as the President. I think, therefore, that there should also be a provision for a Vice-President. There are rule-making powers. Sir, if this thing is definitely provided in the Bill, which is going to be passed as an Act, what harm will there be for a provision like this in this Nurses Bill?

Babu KISHORI MOHAN CHAUDHURI: Sir, I wholeheartedly support the amendment of Dr. Ghose. It is on the ground of economy alone that I suggest that the President should be elected. It is no use appointing a wholetime man when the most important thing is, at present, the maintenance of a register and for that purpose it is not necessary that any highly paid officer should be appointed. If someone, some eminent doctor, is to be appointed, it would be a costly affair. So it is not democracy. I think on the question of economy it is but proper that an elected President should be there. In the *mufassal*—municipalities and district boards—there are many men who are serving creditably on the local bodies as chairmen and they have been sacrificing much time. I know Khan Bahadur Emaduddin works hard for the management of municipal affairs without any remuneration, so I do not understand why a costly arrangement should be made in this case.

As regards the Vice-President, it is but proper that there should be someone to help the President. If the President is absent, the Vice-President may carry on the routine work. With these words, I support the motion.

Rai Bahadur Dr. HARIDHAN DUTT: I fear that Babu Kishori Mohan Chaudhuri is labouring under a misapprehension. There is no question of paying either the President or Vice-President; there is no question of whole-time or part-time officer, nothing of the kind.

Babu KISHORI MOHAN CHAUDHURI: Is there no provision in the Bill? (VOICES: No.)

The Hon'ble Mr. R. N. REID: Sir, with reference to this motion, I should like to observe first that the amendment as it appears on the paper, *viz.*, "the Council as will be constituted under this section shall elect from one of its number as President.....," is nonsense. I do not understand how the Council can elect from one of its number someone as President. It is not a point of principle, but if this motion is passed as it stands, I am afraid the House will not look very intelligent.

As regards the election of the President, that was gone into in connection with the earlier amendments to clause 4(*a*), and I gave certain reasons that the President should be appointed by the Local Government rather than elected, and I do not wish to take up the time of the Council by bringing in those arguments again. I venture to suggest that as the House has accepted sub-clause (*a*), it would rather be difficult now to accept a motion to the effect that the Council shall elect its own President.

As regards the Vice-President, I think, Sir, that on the assumption that clause 11 will not be altered, sufficient provision has been made in the Bill for that purpose. Clause 11(*1*)(*a*) provides for the regulation of the business of the Council and Committees and the mode of transaction of business including provisions for decisions on emergent matters for the circulation of papers to members, etc., which, we are advised, covers the election of the Vice-President. So I oppose the motion.

Mr. PRESIDENT: Before I put this motion to the House, I should like to clear up one point. I heard the Hon'ble Mr. Reid referring to the points raised by Mr. Townend as to the admissibility of Dr. Ghose's amendment. I must ask them to realise that if Babu Khetter Mohan Ray's amendment to omit clause 4(*a*) altogether had been accepted by the House there would be no provision for a President at all but because the House disagreed to omit the whole of 4(*a*) it certainly did not thereby deprive itself if its right to prescribe the manner in which the President or the Vice-President should be appointed or elected. How can it be said that because the House decided not to omit clause 4(*a*), it has actually made up its mind to object to the President or Vice-President being elected? I do not see any reason why the House should not be given an opportunity to decide as to whether the President or the Vice-President should be appointed or elected.

The Hon'ble Mr. R. N. REID: Sir, I was using that as an argument only.

Mr. PRESIDENT: I am glad you did so. But to make matters clearer let me pursue the point further. What would be the result if the amendment to omit section 4(*a*) had been accepted? In that case, section 4(*a*) would be washed out completely and the clause would be left without any provision for a President. The House might have rejected it on that ground and not because it is opposed to the idea of the President being elected.

Mr. A. de C. WILLIAMS: Sir, what would be the effect if this amendment is carried, on sub-clause 4(*a*)? In what manner would you, Sir, put the whole clause to the Council, as settled in Council?

Mr. PRESIDENT: Then probably you will have to make some alteration before the clause is put finally by means of a consequential amendment. That is the only solution. By that, perhaps, you should be able to replace section 4(*a*) by words representing the substance of Dr. Ghose's amendment.

Dr. Amulya Ratan Ghose's motion was then put and lost.

Mr. PRESIDENT: I shall now put clauses 4 to 17.

Rai Bahadur Dr. HARIDHAN DUTT: Sir, before you put that, I would like to have your instruction as to how I can say something which I intend to say about clause 12 although there is no amendment before the House.

Mr. PRESIDENT: If you are really serious about it, all that I can do is to put clauses 4 to 11, leaving out clause 12. Do you really want me to do that?

Rai Bahadur Dr. HARIDHAN DUTT: Yes, Sir.

The motion that clauses 4 to 11 stand part of the Bill was then put and agreed to.

Clause 12.

Rai Bahadur Dr. HARIDHAN DUTT: Mr. President, Sir, I am sorry to interfere at this stage when clause after clause was being smoothly passed; but I have an important point which I want to

emphasise on the floor of the House. Sir, there is a provision for making money payment to the members who would constitute the Nursing Board. I attach much importance to the fact that the day would soon come when it would not be difficult for Bengal to provide these boards with efficient men without payment of money. Sir, 20 years ago it might have been necessary to make payments for inducing these members to attend meetings of such boards to give their advice. But days are now changed. Sir, I find in this Council hall many persons who sit here from hour to hour without expecting any money consideration whatsoever: simply because they have the satisfaction that they are trying to serve their country. If that be so, why should there be any difficulty in a Board like this to get men who would be willing to work without any consideration of money. This question was raised in the Select Committee and the members of the Committee—I do not think I am divulging their secret—in their superior wisdom left this matter to the decision of the Nursing Council and Government. That was a matter of compromise that had arisen in the Select Committee that if the Government framed rules and wanted to make payment to the members, then they could do so, but they would not be bound or obliged to make provision for payment to these members. I think particular attention of the Council should be drawn to this and their expression of opinion should be recorded. As I have already said, it is not desirable that boards like the one which will be constituted later on should have paid members, but at the same time I am not objecting to the provision for payment of reasonable travelling expenses. That is quite right and fair. To pay a fee of Rs. 32 to highly paid officials who are drawing fat pay to attend a meeting of the Nursing Board will be a waste of money. The Board will be constituted with different classes of people such as the Principal of the Calcutta Medical College, Surgeon-Superintendent of the Presidency General Hospital, etc., who are all highly paid officials, and there will also be three representatives on the Board—I would draw attention to section 4(*m*)—namely, one registered nurse, one registered midwife and one registered health visitor. I would appeal to the members to consider the status of these nurses, midwives and health visitors as to their money value, and whether it is fair that the taxpayers' money to the extent of Rs. 32 per member should be given to these classes of people for attending meetings. For a highly paid official Rs. 32 as fee is not much but for persons of the classes of nurses, midwives and health visitors, this amount is certainly more than adequate. I do not mean any disparagement to them, but we know what is the ordinary income of a nurse, midwife or a health visitor. I again ask is it fair that the taxpayers' money should be spent like this simply because these persons will sit along with others for an hour or so in a meeting? Why should the country's money, levied from the taxpayers, be spent on this payment of Rs. 32 to a nurse, midwife or a health visitor simply because they sit

for half an hour in a meeting? Then, why is this fee of Rs. 32 given to highly paid officers who have salaries of Rs. 2,500 or Rs. 3,000 per month? That is why I say this provision of making payment for attendance in those meetings is something which ought not to be there without a challenge. Reasonable travelling allowance is a different thing, and a gentleman coming from distant places like Chittagong or Noakhali may well ask for the travelling allowance, and I do not object to reasonable expenses being paid; but what I do object to is payment of money into the pockets of officials for doing their work for which they are already handsomely paid.

The Hon'ble Mr. R. N. REID: I understand the hon'ble member who spoke on clause 12 only wished to express his views. He has no amendment before the House. I cannot understand why, if he has held a strong view on the question of fees, he did not put in an amendment on that subject and have it put to vote. As it is, this very clause was accepted unanimously by the Select Committee and they put in the two words "if any" as they say in their report to meet the cases where the Council may decide whether a fee should be paid, and beyond that I cannot see how this can very well go. I would suggest that my friend the Rai Bahadur might put on paper his proposal in what way the rules can best be drawn up under clause 31(*c*). That might be very helpful. Beyond that I cannot say anything more.

Rai Bahadur Dr. HARIDHAN DUTT: On a point of personal explanation, Sir. I thought of the matter and we had a talk about it, and I was told that an expression of my feelings on the floor of the House will be recorded and Government will take action later on.

The motion that clause 12 stand part of the Bill was then put and agreed to.

Clauses 13 to 17.

The motion that clauses 13 to 17 stand part of the Bill was then put and agreed to.

Clauses 18 to 20.

Dr. AMULYA RATAN GHOSE: I beg to move that in clause 18 in lines 1 and 2 the words "on payment of such fee as may be prescribed" be omitted.

In clause 18 it is provided that "the following persons on payment of such fee as may be prescribed shall be entitled to registration under this Act——"

Mr. PRESIDENT: Would it be convenient to you to move the next amendment and make one speech?

Dr. AMULYA RATAN GHOSE: Yes, Sir, I will do that. I beg to move that in clause 18 in lines 1 and 2 for the words "of such fee as may be prescribed" the words "of a fee of one rupee" be substituted.

As I have already said this Act will throw cold water upon the enthusiasm of those persons who want to take up the profession of nursing; and if any exorbitant fee is levied, then it will really keep away many enthusiasts from taking up this profession, and that is why it is my earnest desire that this profession should be encouraged as much as the people can do and as much as the Government can afford. With that object I have tabled this motion. If you want efficiency, if you want qualifications, but not that the nursing should be reduced to a very insignificant number—a number which will not be commensurate with the wants and needs of the province, then of course what is the necessity of imposing any fees upon them? The Registrar should try to control their qualifications to the best of your intention, but if you impose any fees upon these persons, it will not be conducive to the good results that we all want to see. Sir, this provision to impose a fee will be a hardship to those persons who come in for the profession of nursing. At the present moment we people of Bengal were searching for enthusiasts who would take to the profession of nursing rather paying from the pockets of the people or of the Government to induce them to take to this profession. As far as I know, there are nurses who begin their training first in any of the institutions; it is not that they are asked to pay fees to these institutions but the institutions on the other hand pay them certain pocket money as allowances or even as pay. But on the other hand if they are asked to pay a certain amount for registration fee, an amount which is not fixed by the representatives of the people, the Government, but by a Council which will not be as much representative as we are in this Council, there will be no candidates for this training. It is for that reason I have tabled my other motion that a fee of Re. 1 should be charged and not more.

Mr. PRESIDENT: That is your alternative proposal.

Dr. AMULYA RATAN GHOSE: Yes, Sir, that is my alternative proposal. My first proposal is not to charge anything. There my intention is made clear. The previous speaker has charged me with certain grievances that as a medical man I do not want fully qualified nurses, but that is not the thing, but I want that enthusiasm of persons who come for nursing should not be in any way hampered. That is my object in helping to pass this Bill. The country has not come to that stage of advancement when nursing is taken as a profession or

occupation. But under certain disadvantages they are compelled under the force of circumstances to take to the profession of nursing. They are so small in number that it will be really a hardship on them and it will be keeping them away from this profession if higher fees are charged for registering their names. If you want that they should be controlled by legislation, please legislate or regulate them in any way you like but do not charge fees for registration. My next point is that a minimum fee of (say) Re. 1 for registration will be quite enough for the purpose.

The Hon'ble Mr. R. N. REID: I must oppose these motions. To provide for no payment of fees or for a fee of the trifling amount which the mover suggests would from one point of view operate to make this Bill ineffective. The only source of income on which the Nursing Council will have to exist is its registration fees. If there are none or are very small, your Council will be unable to operate and I take it it is not the wish of the House that this Nursing Council should cease to exist. As regards the fee, I think we may be able to rely on the Nursing Council not to impose any exorbitant fee such as Dr. Ghose apprehends that will make candidates for registration keep away. On that Nursing Council there are representatives not only of the Medical Faculty and of the superior staff of the Nurses Training Institutions but also persons representing the point of view of the nurses and that is the reason why one particular lady was put on the list in clause 4, the Nursing Superintendent of Dufferin Hospital. I also think that it is a normal arrangement that the people who require certain benefits should pay for them especially and it should not be provided for out of general revenue. If you provide these certificates of registration for nothing, somebody has got to pay for them and for the machinery provided for them, and if the money is not forthcoming in this convenient way from the persons directly concerned they will have to find it elsewhere probably from extra taxation. I do not think the mover of the amendment has succeeded in convincing the House that this amendment should be accepted.

The motions were put and lost.

The motion that clauses 18, 19 and 20 stand part of the Bill was then put and agreed to.

Clauses 21 to 24.

Dr. AMULYA RATAN GHOSE: I beg to move that in clause 21 in lines 4 and 5 the words "and the decision of the Local Government on such appeal shall be final" be omitted.

I do not understand why the final power should be given to the Local Government. There are the law courts, the local courts, High Court and the judges' courts, and why these appellants' hands should be tied. They should not then be allowed to appeal to higher authorities or any such Councils or His Majesty's Government where justice can be satisfactorily administered upon the aggrieved parties. Sir, it is a bad principle to cut the power of appeal. I, therefore, propose that this power to appeal in law courts should not be taken away by any legislation, "the decision of the Local Government on such appeal shall be final." That part should be omitted and the parties aggrieved should have their freedom of submitting their appeal to the law courts, if they are not satisfied with the decision of the Local Government, why should their right of appeal to law courts be taken away? It is a bad principle and it should find no place in this Act. Therefore, I propose my amendment be accepted.

The Hon'ble Mr. R. N. REID: Sir, I beg to suggest that if the words "and the decision of the Local Government on such appeal shall be final" were omitted from the clause, it becomes nonsense. After all, it is simply an executive order. They are allowed to appeal to the Local Government to get the order. But if after that there is nothing laid down to say that the decision will be final, you are nowhere at all.

As regards what Dr. Ghose says that an appeal should lie to the law courts, that is entirely opposed to common sense. It is an executive order and I do not think the law courts have anything to do with it. I do not think it is practical to suggest that a person aggrieved by an order of the Nursing Council should have a statutory right of appeal to High Court. It is not really in consonance with common sense. I oppose the amendment.

Mr. SHANTI SHEKHARESWAR RAY: May I inquire what is meant by Local Government here? Is it the Ministry in charge of the Medical Department and the Department of Public Health or the Hon'ble Member in charge of the Bill?

The Hon'ble Mr. R. N. REID: It means the Governor in Council. It is a reserved department.

The motion was put and lost.

The motion that clauses 21 to 24 stand part of the Bill was then put and agreed to.

Clauses 24A and 25.

Dr. AMULYA RATAN GHOSE: I beg to move that clause 24A be omitted.

Under this clause certain prohibitions are laid down regarding the issue of certificates and entry of names by unrecognised institutions. There may be unrecognised institutions according to the view of Government, but what is the object of stopping them from issuing certificates in their own way? If they do not make any imitation or any such thing as forging the Government certificates or counterfeiting the Government certificates or diplomas, then what is the object of stopping them from issuing certificates from their own institutions as duly qualified from those institutions? The public will consider that certificate on its own merits. The nurses have got no titles like the doctors. The Council will simply write "registered nurses" or something like that, but those institutions which may be unrecognised by Government can be controlled to the extent that they will not be allowed to use the words "registered nurses" or something like that, but why should they be totally stopped from issuing such certificates as is done by the Chittaranjan Seva Sadan at present? They are doing nice work and they are teaching their nurses in no way inferior to any of the institutions recognised by Government. Here, Government have practically copied the Bengal Medical Act. That is the trouble why Government cannot persuade themselves to consider the Nurses Bill in a different light. The Bengal Medical Act was to control the medical men who were to be qualified to administer medicines, to practice surgery and midwifery and all that, but the nurses or the health visitors will not do any such thing by which they can endanger one's life. They will simply carry out the instructions of a qualified midwife or a lady doctor and they should have enough sense to do all those things, and for that this Bill has been brought forward, and to use a common Bengali adage "to use a machine gun to kill a gnat." There are hospitals under private management which are efficiently managed by medical men of independent profession. They can very well have the nurses trained and issue certificates in their own right, but why should Government try to stop them from issuing the certificates? There are the Ayurvedic College and the Homeopathic Colleges which are not affected by the Bengal Medical Act and they are issuing certificates. The Bengal Medical Act does not touch them. Then why should those institutions which are run by efficient and independent medical men of the town or of the province be not allowed to issue certificates according to their own training and their own constitution? This thing I apprehend and I had apprehended will hamper the enthusiasm of the applicants for the nursing profession and also of those

institutions who are doing very excellent work. Even in the opinion of the Rai Bahadur they will be checked. With this object I move that the clause be omitted.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I beg to support this amendment. This is one of the clauses which is likely to make the Bill unworkable. I find that nowhere in this Bill a nurse, midwife or a health visitor has been defined. Under such circumstances we must take the dictionary meaning of the word "nurse," and here is a proposal to prohibit one calling himself or herself a nurse if the person has not received the requisite training in a hospital recognised by the Council or the Government. There may be plenty of cases where a person has been trained in nursing by a private medical practitioner. By this clause you will debar such a person from practising as a nurse when a trained and recognised nurse is not available. Is it the intention of Government to make this measure a measure that will be disliked by the public? As I pointed out earlier in the debate, there are many institutions which may not be approved by the Local Government or by the medical authorities who thrive under the patronage of Government; for instance, there are several Ayurvedic hospitals which train nurses, but they may not receive recognition at the hands of this Council which would be dominated by a certain class of medical men. Take the instance of the Vaidya Shastrapit which has been established mainly through the efforts of Kaviraj Shyamadas Vachaspati. They are doing useful work, training good workers and perhaps by encouraging research in the Ayurvedic system they are doing a great deal of good to the country. If you accept this clause, you make it practically impossible for men who are turned out from such institutions to help the needy. I hope that in view of this, Government will drop this clause and not press for its adoption.

The Hon'ble Mr. R. N. REID: I must oppose this motion of the doctor. I am inclined to think that he did not read the report of the Select Committee which in referring to clause 24A put down very good reasons why they inserted this clause. I will just read out the report on the clause. They said, "We have inserted a new clause 24A with a view to prohibit the issue of certificates by, and entry of names in registers kept by hospitals, schools and similar institutions not approved or recognised under the Act purporting to show that a person is qualified to practise as a nurse, midwife or health visitor, unless such person has been registered under the Act." The point of putting in this clause is in the first place to protect the nurses and in the second place to protect the public. It is very necessary to protect the public so that they are not misled to employ unqualified nurses under the belief that they were qualified. I will take an analogous case. Everyone knows

that there are certain persons who pose themselves as doctors but are not properly qualified doctors. They put up a board outside and make the public believe that they are properly qualified doctors with the result that the public are misled. The same is the case with the nurses. The purpose of this Act is to prevent that misleading of the public. It is also intended to protect the nurses themselves. The main purpose of the Act is to raise the standard of training of the nurses and to see that those who are properly trained are not put into disadvantage by unfair competition by untrained persons. That I think is a sufficient answer to this amendment, and I beg to oppose it.

The motion was then put and lost.

The motion that clauses 24A and 25 stand part of the Bill was then put and agreed to.

Clause 26.

Dr. AMULYA RATAN GHOSE: I beg to move that clause 26 be omitted.

Sir, as we come to clause after clause we find how this Bill will damn the enthusiasm of the nurses. First of all the intention of this clause is that "no hospital, dispensary, infirmary or lying-in hospital which is supported partially or entirely by public funds or local funds shall employ any person as a nurse, midwife or health visitor unless he is registered under this Act or is under training in an institution recognised by the Council."

Well, Sir, if it is sought that in a hospital or dispensary which is maintained by local or public funds, registered nurses are to be employed, there will be great difficulty. Suppose there are not a sufficient number of registered nurses, in that case the institutions will not be able to employ the required number of nurses and their work will suffer. I do not find anything in this clause to show, or any guarantee from the Hon'ble Member in charge of the Bill, that after five years Bengal will be flooded with registered nurses and Bengal will not be in want of nurses so that all the institutions supported by local or public funds shall not employ any other nurses than those registered under this Act. I say that that will not be the case and the institutions will suffer from want of nurses. The Nurses Bill will be more harmful, in effect, to the people of Bengal rather than, as has been advocated, it will be much better and improve the status of the nurses of Bengal. Sir, whenever I am speaking on this Bill I am always disturbed from behind.

Mr. PRESIDENT: He should not be disturbed when speaking; he must be able to develop his arguments without pinpricks from behind.

Reverend B. A. NAG: Sir, in explanation of that I may say that I did not disturb him but asked him not to repeat his arguments.

Mr. PRESIDENT: Then you are doubly wrong. It is for me and not for you to judge. (Laughter.)

Dr. AMULYA RATAN GHOSE: Sir, there are institutions which may not afford to keep highly paid nurses registered under this Act and they may not afford to pay their expenses: they may be very expensive. These institutions are mostly charitable and if this hard and fast rule is imposed on them they will not be able to employ nurses whom they think competent and who will be to their satisfaction. Why should Government tighten the hands of these institutions and prevent them from employing nurses some of whom may have better capacity than the proposed registered nurses. Sir, on these grounds I propose that my amendment be accepted.

The Hon'ble Mr. R. N. REID: I beg to submit that this clause is merely based on considerations of common sense. The object of the Bill is to improve the training and status of nurses, and if you do not fix any time-limit within which untrained and unregistered nurses will not be allowed to practise and say that it will only apply to certain institutions, then you will be allowing the properly qualified and trained nurses to be subjected to the disability of competition with all sorts of unregistered and unqualified people, and at the same time you allow the people to be treated by unqualified nurses. I do not think the mover mentioned it, but there is a proviso to this clause which allows the Local Government to make exemptions on such terms and for such period as it may fix.

The object of this proviso is to make it possible to give special terms in cases where hardship might arise. Sir, the mover talked about highly paid nurses. As I see the future, I think the number of nurses will be largely increased owing to the fact that it will be made more attractive, and one should think that the greater the number of nurses the less likely it is that they will demand a high rate of pay; so I think it is misleading to use such an expression. As I have already said, this clause is essential to make the Bill workable, because if you omit this clause you omit one of the chief provisions of the Bill which makes the registration of nurses the main purpose of the Bill.

I, therefore, oppose the motion.

The motion was put and lost.

The motion that clause 26 stand part of the Bill was then put and agreed to.

New clauses 26A and 26B.

Dr. AMULYA RATAN GHOSE: I beg to move that after clause 26, the following clauses be inserted, namely:—

"26A. Any person who is practising or serving anywhere within India as a nurse, or a midwife or a health visitor after being qualified from any institution recognised or unrecognised before the commencement of this Act shall not be affected by any of the provisions of this Act.

26B. Any person who practises or serves as a nurse or midwife or a health visitor after having qualified from any recognised or unrecognised institution before the commencement of this Act may apply to the Council to sit at an examination within three years from the commencement of this Act and the Council may, after due consideration, by rules to be hereafter framed, make amendments for allowing such applicants to sit at an examination and the passing out of such examination shall entitle such applicant to get his name registered according to this Act."

Sir, I want to add this clause to this Bill with the intention that anyone who is already practising as nurse, midwife or health visitor should not be affected by the provision of this Bill, that is, no retrospective effect should be given in this case. Sir, I hope the Hon'ble Member may think it reasonable to accept this amendment. This amendment is intended only to safeguard those nurses who have passed out before the passing of this Act. I may point out that such a thing happened at the time of the passing of the Bengal Medical Act. At that time students who passed out of the various private medical institutions, which were not recognised, were given a chance to be qualified practitioners and they were allowed to sit for an examination by giving proper fees: after passing this examination, under the transitory provision as it was called, they came to be recognised as registered practitioners as soon as they deposited their registration fees. Now, my point is that the Bengal Medical Act did not affect those doctors who passed out of the private institutions and simply by passing a test they were allowed to use their titles even to this day: in the same way the nurses should be treated and with this object in view I have tabled two things in this amendment to safeguard those nurses who have passed out before the passing of this Bill, and I hope the Hon'ble Member will persuade himself to accept this amendment.

The Hon'ble Mr. R. N. REID: I regret I cannot persuade myself to accept the mover's motion as he desires. Sir, I found considerable

difficulty in understanding exactly what is proposed in the amendment, and I do not find my difficulty enlightened a whit by his speech. I think, considering what the purpose of the Bill is, it will be rather dangerous to have any such clause in the Bill as the mover proposes. He wants it to apply to any person who is practising or serving anywhere within India as a nurse or a midwife or a health visitor after being qualified from any institution, etc. In the first place we have passed clause 26 which says that only for 5 years after the commencement of the Act can such people practise; such persons cannot be employed by dispensaries, hospitals and so on, which are supported partially or entirely by public funds or local funds, for more than 5 years after the commencement of the Act. There is nothing so far as I know to prevent the persons he refers to from actually practising but they cannot practise as registered nurses, and I am quite unable to see why they should be allowed to do so. If he refers to clause 18 which makes what he calls a kind of transitory provision, I think he will find that they are entitled to registration under this Act: and the proviso to this clause says: Provided that nurses and midwives who at the commencement of this Act are enrolled on their registers maintained by the State Medical Faculty of Bengal shall be entitled to have their names transferred according to their qualifications, etc.

Dr. AMULYA RATAN GHOSE: But that is quite a different thing altogether?

The Hon'ble Mr. R. N. REID: Not quite a different thing. But in any case I do not think it is safe to accept a clause such as is proposed as clause 26A in the sweeping terms in which it has been drafted, namely, that no person who is practising and nobody who has any sort of qualification before this Act was enforced, shall be affected by any of the provisions of this Act. We must protect the public and the nurses as well. For these reasons I cannot agree to the amendment.

Dr. AMULYA RATAN GHOSE: What about new clause 26B?

The Hon'ble Mr. R. N. REID: For the same reasons also I am unable to accept it.

The motion was put and lost.

Clauses 27 to 37.

The motion that clauses 27 to 37 stand part of the Bill was then put and agreed to.

Preamble.

The motion that the preamble stand part of the Bill was then put and agreed to.

The Hon'ble Mr. R. N. REID: I beg to move that the Bengal Nurses Bill, 1934, as settled in Council, be passed.

Dr. AMULYA RATAN GHOSE: I oppose the motion.

The motion was put and agreed to.

Adjournment.

The Council was then adjourned till 3 p.m. on Wednesday, the 28th February, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Wednesday, the 28th February, 1934, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 86 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Mr. Gandhi's visit to Bengal.

*83. **Mr. R. MAITI:** (*a*) Is the Hon'ble Member in charge of the Political Department aware that Mahatma Gandhi has been touring all over India for the last few months in connection with *Harijan* work and is shortly expected to visit Bengal in connection with the same?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state whether it is in the contemplation of the Government to prevent Gandhiji from visiting the district of Midnapore during his tour in Bengal?

MEMBER in charge of POLITICAL DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) Government are not aware that Mr. Gandhi has settled upon any date in the near future for a visit to Bengal.

(*b*) Does not arise.

Mr. SHANTI SHEKHARESWAR RAY: Is it not a fact that the District Magistrate of Midnapore wrote to Mr. B. N. Sasmal, after consultation with the Government of Bengal, that a visit of Mr. Gandhi to the district of Midnapore was undesirable?

The Hon'ble Mr. R. N. REID: Yes, Sir.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to state the reasons for such a decision on the part of Government?

The Hon'ble Mr. R. N. REID: I do not think I need disclose those reasons.

Mr. P. BANERJI: How is that Government are not aware that Mr. Gandhi is making a tour and that he will visit Bengal after he has visited Bihar?

The Hon'ble Mr. R. N. REID: Government have not seen any official announcement to that effect.

Maulvi SYED MAJID BAKSH: Does the Hon'ble Member read current newspapers?

(No reply was given.)

Mr. R. MAITI: What objection Government can have to Mr. Gandhi's coming to Midnapore?

The Hon'ble Mr. R. N. REID: That question is asking for the solution of a hypothetical problem which I am not prepared to solve.

Mr. NARENDRA KUMAR BASU: When the Government of Bengal authorised the District Magistrate of Midnapore to write that letter, was it not also a hypothetical question?

The Hon'ble Mr. R. N. REID: It is not a question at all.

Mr. NARENDRA KUMAR BASU: Will the Hon'ble Member be pleased to state why the Government of Bengal think that Mr. Gandhi ought not to visit Midnapore?

The Hon'ble Mr. R. N. REID: Government are actuated by considerations of the public interest.

Mr. NARENDRA KUMAR BASU: Is public interest in this matter the same as Government interest according to the Hon'ble Member?

The Hon'ble Mr. R. N. REID: In this case, yes.

Mr. P. BANERJI: Is it the intention of Government to stop Mr. Gandhi's coming to Bengal at all?

The Hon'ble Mr. R. N. REID: The answer that I gave to the question of Mr. Maiti is the same answer which I would give to Mr. Banerji's question.

Mr. SHANTI SHEKHARESWAR RAY: Have the Government received any report from any person suggesting that Mr. Gandhi's visit is undesirable?

The Hon'ble Mr. R. N. REID: I cannot recall any such representation.

Babu SATYA KINKAR SAHANA: Is the Hon'ble Member aware of the fact that there is an Association in Bengal called the Anti-Gandhi Association who think that his presence here is undesirable?

The Hon'ble Mr. R. N. REID: No, I do not know that.

Mr. R. MAITI: Are the Government going to issue a *communiqué* in this matter?

The Hon'ble Mr. R. N. REID: Government have not considered the matter of issuing a *communiqué*.

Shab-i-barat holiday in Bakarganj.

*94. **Maulvi MUHAMMAD HOSSAIN:** (*a*) Is the Hon'ble Member in charge of the Judicial Department aware—

(*i*) that there is an additional holiday for Muhammadan employees under the Government of Bengal for the Muhammadan festival of *Shab-i-barat*; and

(*ii*) this additional holiday was not allowed in the civil courts of Bakarganj on the occasion of the last *Shab-i-barat* festival?

(*b*) If the answer to (*a*) (*ii*) is in the affirmative, what are the reasons therefor?

(*c*) Is the Hon'ble Member also aware that the Muhammadans of the Bakarganj Collectorate were allowed to enjoy the holiday?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) (*i*) Yes.

(*ii*) A sectional holiday for Moslems was allowed.

(*b*) Does not arise.

(*c*) Yes.

Maulvi ABDUL KARIM: With reference to (*ii*), am I to understand that the Muhammadan employees of the civil courts in Bakarganj were allowed leave on the occasion of *Shab-i-barat* festival?

The Hon'ble Mr. R. N. REID: Yes.

Maulvi SYED MAJID BAKSH: Has it been decided or is likely to be decided that full holiday will be given to the public on the occasion of *Shab-i-barat* in future?

The Hon'ble Mr. R. N. REID: I must ask for notice.

Maulvi SYED MAJID BAKSH: Is the Hon'ble Member aware that sectional holidays for Muhammadans cause inconvenience to the general public?

The Hon'ble Mr. R. N. REID: Government are not aware of that.

GOVERNMENT BUSINESS

Discussion of the budget for 1934-35

Mr. PRESIDENT: We will now have a general discussion of the budget for 1934-35.

The Hon'ble Mr. J. A. WOODHEAD: From the report in this morning's papers of the budget speech of the Hon'ble the Finance Member of the Government of India, members of the Council will have learnt of the plan which the Government of India have put forward in order to assist this province in her financial difficulties. According to that plan the Government of India propose to allocate to the jute-producing provinces half the net proceeds of the jute export duty with effect from the 1st April, 1934. While, for reasons which I trust are obvious, it would not be proper at the present stage to discuss the plan or any part of it on the floor of this House, I feel sure all members will desire that we in Bengal should express our gratitude to the Government of India for the action they have taken and for the immediate financial

assistance which we now hope to receive by the transfer from the Centre to the jute-producing provinces of half the net proceeds of the jute export duty.

Members will also have noticed with satisfaction the assurance given in the Hon'ble the Finance Member's speech that it is not intended that the proposal to hand over immediately to the jute-producing provinces half the net proceeds of the jute export duty should be regarded as a full and final settlement of Bengal's financial position, and in this connection they will have seen the Hon'ble Finance Member's reference to the treatment of Bengal's deficit debt as one of the important points involved in any such settlement. Sir, we welcome these statements because they assure us that the present proposal will not in any way prejudice the further claims that we have put forward in connection with the proposed new constitutional arrangements.

Sir, I cannot say more than this. We in Bengal greatly appreciate the recognition by the Government of India of our special difficulties and are deeply grateful for the action they have taken.

Mr. J. N. GUPTA: Mr. President, Sir, the gloomy picture of the financial difficulties of this unfortunate province as disclosed in the budget speech of Hon'ble the Finance Member, though not unexpected, yet I am afraid is far blacker than our worst apprehensions. For the revenue deficit in the coming year 1934-35 will be 2 crores and a quarter or, as pointed out by the Finance Member, fully 25 *per cent.* of our expected revenue. We are also already carrying a load of a debt of over 4 crores of rupees with annual interest charges of nearly quarter of a crore of rupees. When we compare this deplorable plight of our unfortunate province with the expected revenue position of the sister presidencies of Madras and Bombay and of the United Provinces for the forthcoming year—who in face of the worldwide depression caused by the economic crisis through which we are now passing have not only been able to balance their budgets but have each been able to keep a small surplus in hand—it is only natural that we should be assailed by an uncontrolable feeling of a sinking of the heart. In these circumstances we are grateful for any glimmer of hope, and we gladly join the Hon'ble Finance Member in looking to the future constitution for even a partial richification of the grave financial injustice to which this province has been subjected for decades past, and we have to congratulate the Hon'ble Member and the Government for the budget announcement of the Government of India conceding Bengal a crore and 67 lakhs from the jute tax which will help us to some extent to balance our budget. Needless to say we fully endorse Mr. Woodhead's view that the principal and almost sole cause of the growing embarrassment of the province has been its financial starvation at the hands of the Government of India, and in fact we would have preferred if the Hon'ble Member

had given this view a still more prominent place in his budget speech and showed how this is undoubtedly the factor which has marred our fortunes and is responsible for the sad contrast in our position to-day from that of the more fortunate provinces. For, after all, civil disobedience was more in evidence in Bombay than it was here and should not even terrorism be justly described as the misbegotten offspring of the financial and economic prostration of the province? We therefore whole-heartedly support the contention of the Finance Member—that this province is entitled to even a larger measure of financial redress than contemplated in the White Paper scheme, and what has just been given to us, and that the jute tax must be conceded to be wholly a provincial source of income, that we must receive a larger share of the income-tax collections in the province, and furthermore that this province must be allowed to begin its career under the new constitution with a clean sheet unembarrassed with liabilities which were inevitable under the conditions to which it was unjustly subjected.

Sir, in all this we whole-heartedly agree with the Finance Member, but unfortunately we are not so sanguine that our financial position will be so sound or that we will have no cause for the most serious anxiety about the future of the province even if we received the partial recognition of our financial claims as indicated above. Sir, even if we receive an addition to our revenues say by another 3 crores of rupees, our total resources according to the present index of our principal sources of revenue will not be very much more than 11 or 12 crores, and we have to cater for the needs of a population of over 51 millions. Not taking into account the heavy drain which the city of Calcutta alone makes on our slender resources and the heavy expenditure required to cope with the present-day difficulties of the terrorist menace, we must always keep in mind the fact that we have a long leeway to make up and we must have sufficient resources to repair the ravages made by such long-standing and continued neglect. Even under the existing economic depression of the country, Bombay hopes to have a revenue of over 15 crores and Madras over 17 crores and throughout the last decade and even longer, both the major presidencies had considerably more than twice the income per head of the population than we had, and in consequence were able to spend more than double of what we have been able to do on the nation-building departments of the administration. Imagine what the cumulative effect of the systematic starvation of all the arteries of national prosperity and growth must be continued over so long a period. What are we to do then—what is our duty at the present crisis when we are faced with financial bankruptcy, the slow and steady deterioration of all the sources of our revenue, and what is worse the prospect of the advent of a form of constitution in the near future which far from helping to unite all the agencies for progress which are available in the province threatens to sow discord

and disunion between the major communities and thus paralyse any potential powers which we may possess for repairing our past ravages and laying the foundation of a new era of progress and prosperity? Sir, it is because the budget speech of the Hon'ble Finance Member does not give any indication that Government fully realise the extent and true inwardness of the many-sided dangers with which this province is threatened and does not indicate any definite lines of policy for combating these dangers that I consider it my duty to make a few observations for the consideration of the hon'ble members of this House, the Treasury Bench and the wider bar of the public of Bengal.

Sir, the Hon'ble Finance Member in his speech has said: "If there were no hope of our claim to a revision of the existing financial settlement being considered, the situation would be one of the utmost gravity and the situation in fact would demand immediate remedial action of the most drastic character." I venture to submit that if we read the signs of the time aright, there are good and weighty reasons for holding that our ailments cannot brook a moment's delay and that we will do ourselves not much good by just waiting for world conditions to improve or our excise revenue to go up but seek for salvation in more certain and reliable paths and must embark immediately on comprehensive measures, but not on lines apparently contemplated by the Hon'ble Finance Member. Far from retrenching the expenditure on the nation-building departments, it has become essential in my opinion that we should greatly augment expenditure in all directions which will help to create national contentment and enhance the wealth-producing capacity of the people of Bengal. Sir, it is essentially the same line of policy I venture to submit which will help us to wean over the young men and women of Bengal to our side and thus most effectually scorch terrorism, as well as at the same time help to revive the decaying financial resources of the province and place our revenues on far sounder and reliable foundations. It is a matter for congratulation that the attention of the Government has been drawn in these directions and the appointment of an Economic Board for investigating the root causes of our economic and agrarian depression and devising suitable remedies has been followed by the appointment of a Rural Development Commissioner and a *communiqué* has just issued defining the sphere of his activities and his place in the existing governmental machinery. This is all to the good, but we seek in vain in the speech of the Hon'ble Member for any indication of seeking for the ways and means for the allocation of suitable funds to enable action being taken for the amelioration of the economic and material condition either of the agriculturists or any other section of the people. Sir, probing into the root causes of a disease and suggesting suitable remedies are no doubt commendable efforts, but we cannot allow the patient to die in the meanwhile and, as I said some time ago, the people of Bengal are anxiously and impatiently waiting for an actual forward movement

and the actual adoption of remedial measures. The allocation of at least a crore of rupees at once, in our opinion, has become imperatively necessary for the inauguration of a comprehensive policy for enhancing the agricultural and industrial wealth-producing power of the people of Bengal, which will not only open the door for the gradual revival of our decaying revenues but also serve as powerful emollient to soothe the political unrest of the people, particularly in the ranks of the disappointed and disaffected youthful community. I am sure the Hon'ble Finance Member will reply that there is nobody who would be more pleased than he would be if funds could be made available for such a commendable object. My submission will be that if you have not the money, borrow the money—stake the credit of the province for raising its credit, indeed to save it from chronic bankruptcy. Sir, day by day the coils of the vicious circle of increasing political unrest and crime requiring more and more expenditure on the coercive arms of the Government, leaving less and less for our nation-building activities is tightening its hold and threatening to throttle the very life of the nation. At any cost this vicious circle must be broken and sufficient money found for bold and comprehensive measures—even by raising loans if necessary. We have the recent example of the United Provinces Government which we can follow, and I have no doubt whatever that this matter must have been receiving the serious attention of the Government itself. If so, why will the Government not take us into their confidence and tell us what prevents them from taking immediate action the necessity for which surely needs no demonstration? Are we to sit with folded hands and wait for world conditions to improve and God only knows when they will improve, or till we are permitted by the Central Government to keep a much larger share of our own revenues and who can say when that will be. Sir, does anybody seriously believe that jute will ever be the same source of wealth to our province as it has been in the past? And is it not high time, Sir, that the whole wealth-producing capacity of this province were to be placed on a different plane altogether to that it has been in the past? I am sure it will not be necessary for me to make my meaning clearer by pointing that the children of the soil, the people of Bengal, must be brought forward so that they may have a larger share in the wealth-producing activities of the province. Closely analysed what part do the people of Bengal play in producing the wealth from which the imposing collections of customs duties and the income-tax are made on which alone the wealth of the province is appraised? I admit that in the sphere of the larger industries it may not be easy for Government to take action. But begin with the smaller industries, even the agricultural industries if you like. Do we realize what source of potential wealth there is in the province—only if cattle-breeding and stock-breeding were developed on an up-to-date line, a source of wealth which will be far more enduring than the earnings from a monopoly crop

like jute? Jute may have decayed, but there i[illegible] future for sugarcane, and the Agricultural Department has itself shown how profitable small industries can be set up for crushing cane and manufacturing sugar. But, Sir, I do not wish to labour this issue. Give us more money—it is money that we want. Your Development Commissioner will not be able to do much good without funds at his disposal. Put him in touch with the District Officer; in fact, let each District Officer be made the Development Officer for his own district, and between the Development Commissioner and the District Development Officer with the aid of the non-official committee of the leading men of the district and with sufficient funds at their command they will be able, we feel confident, to initiate a new policy for the economic and agricultural advancement of each district. Sir, we have heard a great deal of the dual policy of the Government, but while Government have taken every step and armed themselves with every power which they have considered necessary for the preservation of law and order, what comprehensive measures have been adopted for the appeasement of the people and for calling forth their willing and voluntary co-operation with Government? Alas, what evidence is there in the budget announcement to show Government's anxiety to carry out even partially their obligations in the second sphere of their dual policy, except perhaps the provision of a few thousands for starting a few land mortgage banks? It is now recognised in the highest circles that economic causes play a most important part in producing the terrorist mentality amongst the youth of Bengal. Here is a golden opportunity. You have your Development Commissioner; we have suggested that the District Officer must constitute himself the Development Officer of his own district; between them let them devise necessary means for finding employment for willing and qualified young men—not only in small industries, but in doing social service and rural uplift work in the rural areas of the districts. We have heard a great deal of the need of intensive propaganda to kill terrorism, but I submit there is no propaganda which is likely to be more successful and which will appeal to all classes of the youth of the country more than their active enlistment and initiation in some field which will give scope for their enthusiasm and energy. If in each district occupation on new lines could be found for even a dozen young men and in two rural unions the people could be helped to achieve a higher standard of living. I submit a very important start will have been made. Sir, I admit that to initiate such a policy and take action on the lines indicated, we shall be taking risks and heavy responsibility, but I solemnly urge that if the Bengal Government constituted as it is, do not feel equal to assuming these responsibilities, if they have not the imagination to look sufficiently far and deep or the courage to take immediate remedial measures, what is there to prevent them from making room for a Government which will have the necessary courage and the required long vision? Indeed,

Sir, I feel perfectly convinced, faced as this province is with formidable difficulties of every description and unresourceful and unready as the present Government appears to be, they will be only acting fairly to themselves and to the people of Bengal if they should at once appeal to the people and have a fresh election to the Bengal Council. The normal life of the Council has long since expired, and it is high time that we should seek for a clear mandate from the people. On no grounds of expediency whatsoever in my humble judgment should the people be any longer deprived of their constitutional privilege of expressing their opinion and giving their mandate on the vital issues which are now facing the province. Of these the most pressing is whether we should not proceed at once to carry out a truly national policy for Bengal and whether the people will like to entrust that duty in the future constitution to a communal or a truly national Government.

Mr. W. H. THOMPSON: Since we read Sir George Schuster's speech in the paper this morning, it is a day of rejoicing for us in Bengal. The justification of our cause rests now not by the mere protestation of a White Paper, but a cheque for a crore and three-quarters. We have now obtained not only a decree in our favour, but, we believe, very largely through His Excellency Sir John Anderson's efforts, we have been given recognition of our rights. We may hope that mesne profits will be realisable in the future, but in the meantime if Mr. Woodhead and the Government of Bengal are saying, "thank you" to the Government of India, I believe I speak on behalf of the whole House, when I ask him to add our thanks for what has been given us.

Sir, in Mr. Marr and in Mr. Woodhead we have had Finance Members with round and cheerful faces, but on the occasion of the introduction of their budgets they have made them as long and as lugubrious as Sir James Donald's. To-day, Sir, look at Mr. Woodhead, how he has changed since a week ago. We must not be surprised at the mournful countenance of a Finance Member in Bengal. Provincial budgets have been coming out one after another: Madras we know would be all right. Now the United Provinces has balanced its budget, and Bombay has done so comparatively comfortably. But then we must remember that Bombay has a provincial revenue of 15 crores. We never could have managed this great province of Bengal on 9 crores, and we ought never to have been asked to try. Now that we have got our half-share of the jute tax, we must not think that everything in the garden will be lovely and that we can proceed with all our pet schemes without the need to think of the cost. Our budget is not balanced even yet. When we look across to Bombay and cast envious eyes on Bombay's 15 crores, do not let us forget that the 15 crores is paid by the people of the Bombay Presidency. The population of Bombay is only about

60 *per cent.* of our population but 16 crores of provincial revenue comes out of their pockets and only 9 crores here. Some day the future Bengal will have to tax itself again. Times may be too hard now but some day it will have to be done. The largest interests—immeasurably—in this province are the agricultural and landed interests. It will be no use taxing minor interests. We have got to find some tax which can be spread over all the wide acres of this fertile province in such a way that it will not prove a crushing burden on anybody.

The Government of Bengal is undoubtedly to be congratulated on its efforts at retrenchment. It has deserved congratulation on this score, for it really has got down to it and done far more than we ever thought it would do from the very suspicious and guarded comments that came from the Government benches after the report of the Retrenchment Committee was received. The Government of Bengal hardly took the report of the 1923 Retrenchment Committee at all seriously, but this time with His Excellency to set the example it has done very differently. We, in this group, still maintain that on the score of the work to be done there was no necessity to keep those seven Treasury benches so snugly and so comfortably filled. As regards the Ministry we would not support a cut to reduce the number of Ministers. We, in this group, Sir, have fought hard in our time for a stable ministry and we have got it. The contrast between the stability of this ministry and that of its predecessors may rest partly on the fact that it consists of three instead of two and we would not disturb it. His Excellency's Council has been very much weakened by the loss of Sir Provash Chunder Mitter whom we all loved and esteemed and who was a great worker. But we do feel, Sir, that when the next vacancy occurs there will be no real necessity to fill it. (A VOICE: "Why next vacancy?") We should like to have seen a substantial diversion of funds from secondary and University education in the direction of the preliminary expenses for making a start at least with the introduction of primary education and we are seriously disappointed, Sir, to find that this is not the case. As I have said before in this House we, in this group, believe that primary education is the most important reform that can be thought of for Bengal and that incidentally it will be the solution of the problem of *bhadralok* unemployment for the school teachers will and should be *bhadralok*.

Just one other point, Sir, which I think is important. It is now possible for those who have credit behind them to borrow more cheaply than has been possible for the last 35 years—possibly more cheaply than will be possible for the next 35 years. Bengal seems to be the one place in the world where this is not realised. I am not talking so much—not talking entirely—of Government spending. The Calcutta Corporation has a great deal which it has to do on borrowed money. Now is the time, Sir, to take up the drainage scheme. The first respon-

sibility of course rests with the Corporation itself, but Government will be taking on its shoulders a share of that responsibility if it puts anything in the way of coming to an understanding with the Corporation on this subject. The Calcutta Improvement Trust, Sir, unlike the Government, is in a very strong financial position. It can borrow money and spend it to advantage. During the current year it has fallen short of its spending on land acquisition by no less than 10 lakhs—20 *per cent.* of what it had budgeted—purely on account of wholly unnecessary delays in the Local Self-Government Department. It has budgeted to spend 78 lakhs on land acquisition during 1933-34 and its only fear of not being able to carry this out is the fear of the dilatory character of the Local Self-Government Department in regard to sanctions and notices. Then, Sir, there is the problem of the Howrah Bridge. Now is the time to borrow and build the new Howrah Bridge; only to let the contract would rehabilitate the engineering trade in Bengal. The country wants money to be spent like that; that is the way towards a return to prosperity; the case of Howrah Bridge rests with the Government of Bengal. Nearly a year ago, Sir, after the Railroad Conference at Simla, the Government of India has almost begged the Government of Bengal to produce a scheme for road development to be financed from loans. No scheme is forthcoming. In Bihar they are now putting down thousands of tube-wells to assist the water-supply system which has been dislocated by the earthquake, and they will be spending thousands and thousands of rupees there on setting right the roads. Some of us, Sir, are almost beginning to feel that we could do with an earthquake in Bengal if only it would shake the Government of Bengal and not disturb the rest of us.

Maulvi ABUL KASEM: Mr. President, Sir, it is with great diffidence that I rise to address this House to-day. I feel diffident because I know by experience that anything that is said from these benches is neither attended to nor taken advantage of by the Treasury Benches (A Voice: "Question.") Sir, we know that the Writers' Building believes itself that it is above all advice and that whatever it does is the best, and the rest of the people are all mere children. I know, Sir, and I find it that the Treasury Bench is in darkness; that darkness cannot be removed by artificial lights if they do not attend to the advice that is so ungrudgingly given by the non-official members of this House. I sympathise with the unfortunate Finance Minister of an insolvent State. What can he do when the Treasury is empty. For this state of things he is not responsible but his colleagues who have administered the province in an extravagant way and without much success. Sir, we are told now and Mr. Thompson has repeated it that the first and foremost duty of the Government is rural reconstruction and rural development, but the history of British India, so far as Bengal is concerned,

has been consistently to build cities at the cost of the rural areas. They have never realised that the people of India live in villages and in agricultural areas and not in towns, but they have spent mints of money year after year out of the provincial revenues not only on this magnificient city of Calcutta but on all towns all over the province, and in this way many towns have grown up. Their policy has been the greatest good to the greatest number. As, in towns, a large number of people congregate, therefore, they must come forward with money for their convenience and comfort. But they miss one important fact that the people who live in towns and particularly in the city of Calcutta are rich people, at any rate well-to-do and prosperous people, and those who live in rural areas have not got sufficient to have two meals a day. I am thankful to the Bengal Government for having after all realised that something has to be done for the rural areas. After building the town and after having done everything for the convenience of the people of the town, they are now beginning to realise that something has to be done for the rural areas. And now Mr. Townend has been placed as head of the Rural Development Committee, after finishing the business of the city. What is more, I want to draw the attention of the House, and of the Treasury Benches in particular, that a lot of money is being spent for the protection of the lives, not only of the officials of the Government, but also for other citizens of the city. I know and I feel that it is absolutely necessary in the present circumstances, but what I regret is that we have been brought to this state of affairs. We in this Council have never refused either power or money to the Treasury Bench for the suppression of terrorism and anarchism, but we find to-day, as in the past, that the Government have failed to bring about a change for the better and from day to day we find that our expenses in this direction is increasing. I apprehend that there must be something wrong if not in the city of Denmark, at least in Dalhousie Square. We feel that if the Government in this country had been carried on in a proper way, and if the necessary steps had been taken at the proper time, then the province would not have been in the state in which it is now. Government moves in the right direction, but it moves very slowly and the words "too late" are writ large on the policy of Government with reference to many questions.

Mr. Thompson said that primary education should be taken up in right earnest. On previous occasions I have appealed for this, but unfortunately my appeal has fallen on deaf ears. With due deference to the leaders of the intelligentsia in the province, I beg to submit that the money that the Government spends on higher education—University education—is more or less money misspent. This is a factory for producing man production, and the factory which manufactures graduates, in the first place produces too many and in the second

place cheap and imperfect graduates. That should not be the proper policy for Government. We have been told that our jute production, in order to keep prices staple, should be restricted. I think in the very near future we will be told to burn our rice, but what are you going to do with the overproduction of our graduates?

Mr .Gupta has spoken about industries. Why not direct the channel of education from a purely intelligent and higher education to the direction which will be more useful and productive? Sir, this budget that has been read out to us, and the plain speech of the Hon'ble Finance Member was anticipated by us, and it was neither a shock nor a surprise. To-day, Sir, we have been told about the generosity of the Government of India in giving us a portion of the jute tax or some contribution. Situated as we are, Sir, we are grateful to the Government of India, specially to Sir George Schuster, for his great favour and for this charity—I use the words advisedly—but I submit this state of things, this dependence on charity and on doles cannot continue for long. Our expenses have increased by leaps and bounds without any appreciable increase in our revenue. We have been told by Mr. Thompson that a province with a smaller population has a larger revenue than Bengal. I say, one of the chief causes of this shortness of revenue is the fact that whereas Bombay has an elastic land revenue, we are tied down by a permanent settlement, a settlement which is bad, so our revenue in that direction cannot improve. Secondly in the Bombay Presidency the people and the Government have equally tried to increase the earning capacity of the people there. Here in Bengal, neither the Government nor the people have done anything in that direction. I do not want to detain this Council, but I only want to say that I hope this Government and the Government which will succeed it in a year or two will take the necessary steps to see that our expenses are less and our earning capacity increased.

Mr. S. M. BOSE: At the very beginning might I join my voice to convey our congratulations to the Hon'ble Finance Member for the very able fight which he has put up and over which he has half-succeeded. I hope and trust that he will be able to get the other half too, and that he will be able in addition, to get our just share of the income-tax. Sir, I am very glad that this relief, belated though it be, has at last been granted to us. I do not think the Government of India has been at all very good to us. Since 1916 over 50 crores of rupees have been taken from us in jute tax. For them now to return 167 lakhs is nothing very great or grand. But, Sir, we are thankful for small mercies, and I think I may assure the Hon'ble Mr. Woodhead that we greatly appreciate the fight that he has put up with the Government of India. Then, secondly, I wish to say a few words to the Hon'ble Home Member (whom I do

not find here nor do I find anybody on his behalf here). I want to ask if his attention has been drawn to the remarks of the Public Accounts Committee that the Police Department expenditure has been overestimated and, after getting us to pass a large budget, failed in time to surrender the unspent money. I hope and trust that he will be able to show us that in this budget, at any rate, he has not overestimated expenditure and that his department is not above the ordinary rule which demands that a department should by a certain date surrender the amount not likely to be spent before the closing of the year.

Then I want to ask the Hon'ble Member in charge of the Judicial Department if he is aware of the High Court retrenchment Committee's Report in 1923? And will he kindly tell us what steps have been taken since 1923 up to date to give effect to what that committee recommended. Last year about this time Mr. Suklal Nag drew the attention of the Hon'ble Member to the High Court Retrenchment Committee Report and in particular drew attention to two points, about the Honorary Sheriff and the question of a fixed pay for the Official Assignee. I want to know what steps have been taken *inter alia* on these two points, and whether the amount of savings effected since 1923 has paid for the cost of the Report.

Lastly, a few words about our Ministers in charge of the Transferred Departments. In the scramble for money they have on the whole come out well. But I regret to find that the Hon'ble Minister in charge of Public Health (whom I do not see here), has in the scramble come out second best and that the amount provided for public health is less for 1934-35 than the revised estimate for the current year by not less than Rs. 1,22,000. Government, I am afraid, has treated this department rather badly, perhaps in the vain desire to balance the budget. I am tired, Sir, of this phrase "balanced budget." I wish our Hon'ble Ministers would for a moment become unbalanced, run amuck and, like Oliver Twist ask for more. I am not afraid of running into debt. I am tired of retrenchment, Sir, retrenchment is too much with us. I think we should take courage in our hands and spend more and more, because I know that in the coming fight with the Centre, the amount of the grant given to us will depend upon how much we really need. Therefore, it is of the utmost importance that we should budget wisely and not be afraid of running into debt; and on this point I entirely agree with what has been said to-day about the need for incurring debt for our current requirements.

Babu KISHORI MOHAN CHAUDHURI: Sir, I rise to say a few words especially about the Imperial grant of half of the jute tax. I congratulate the Hon'ble Finance Member as he has been able to

establish a good case, by showing deficit budget for years together, for the special consideration of the Central Government. In the last two years he was able to get from the Government of India a grant of about three crores of rupees and this year he has been able to get a crore and 67 lakhs of rupees. He has been able to persuade the Central Government to suspend the payment of our debts or overdrawals to the Government of India. It is, I think, a grand achievement on his part. Although since the inauguration of the Reformed Council in 1919 we have been urging that Bengal has been very badly treated financially, we got nothing from the Central Government till now beyond getting a remission of Rs. 1,63 lakhs. This time he has been able to get something from the coffers of the Government of India. Some consideration has been shown by granting half the jute duty; but that is not at all really adequate. All the same, we must be thankful to the Government and ask the Hon'ble Mr. Woodhead to convey our thanks to the Government of India; but at the same time we must say that the mercy is not at all adequate.

For the next year's budget it has been shown that we would require over two crores to meet the ordinary expenditure of Government. If it is so, then a crore and 67 lakhs would be of no use and still we require Rs. 40 lakhs: we do not see any opening or closing balance in these two years. We have got a pretty large sum from the Central Road Development Fund, but we have not been able to spend from it to the fullest extent. These are debts and how to meet them we do not know. A small mercy which is not adequate does not carry much in the announcement of Sir George Schuster there is another thing which I apprehend would do great harm to Bengal. It is announced that a duty upon Indian sugar is to be charged and on tobacco too. On the depression of the jute business in Bengal people are taking to sugarcane and tobacco cultivation, hoping that thereby they would be able to retrieve the situation to a certain extent, but if these taxes are to be paid I believe it will be a death blow to the sugarcane industry, a nascent industry, and the spread of the tobacco industry. What to do and in what way our cultivators will be able to maintain themselves I fail to understand. They will not be able to compete with foreign sugar and the nascent industry would be nipped in the bud. These are things which should be given expression to, and I hope the Government of Bengal would fight hard for getting adequate relief from the Central Government.

Maulvi ABUL QUASEM: On a point of order, Sir. Is it not desirable that the members of Government should remain present in the Council when the general discussion on the budget is going on? It is rather discouraging for the official members to be away at such a time.

Mr. PRESIDENT: I quite agree with you. Cannot my decision be communicated to the Hon'ble Members and Ministers concerned by someone from the Treasury Benches?

[Mr. Fawcus then left the Chamber to convey a message, and a little later the Treasury Benches were fuller.]

Babu KISHORI MOHAN CHAUDHURI: I deplore as much as my friend, but we should know very well that our views carry no weight with the Government Benches and they do not care to hear of the complaints against them. In fact, I must repeat that whatever we have got from the Central Government is not enough and a tough fight is necessary to induce the Government that adequate relief should be granted to us. Without adequate relief nothing can be done. We cannot think of education, the question of unemployment, agricultural improvement, or industrial development without money. I think that not only the whole of the jute duty but at least half of the income-tax ought to be granted to us, otherwise it would be impossible to maintain an efficient Government. The Hon'ble the Finance Member has told us that a saving of 90 lakhs has been effected by retrenchment, but still there is a deficit of two crores and six lakhs. What benefit have we derived even by this retrenchment? Another thing has been established by the Finance Member and that is that though for the suppression of the terrorist movement money is being spent rather lavishly and measures after measures are being enacted, still there is no suppression. If there is suppression, this additional sum would not have been necessary. It is admitted on the part of Government that they have not been able to suppress the terrorist movement. Mere enactment of drastic measures will not do. It has been suggested that a conciliatory movement should be attempted. Of course, whoever might be found guilty should be adequately punished and there is no sympathy for the terrorist movement in the province, but the thing is that mere enactment of drastic measures will not do. If really the question of unemployment can be tackled properly and if the people's distress is looked into and adequate measures are adopted for relieving it, in that case there will be a genuine love for the administration, and I believe the unrest would in a great measure be gone, but these things are not taken into consideration. That is our complaint and we simply repeat them. It is useless to suggest any improvement here and there because Government have no money. We are contracting debt and the best effort of the Bengal Government has achieved only to this extent that they have been given a share of the jute duty by which the overdrawals will be lessened, but not full relief has been given to them. I need not dilate upon the grave situation at which we have arrived. It is time that something ought to be done, some more action ought to be taken upon the Retrenchment Committee's

proposals. We of course do not know what the proposals are about the future pay, etc., of the Government servants and it is not time to dilate upon them here. A new constitution is coming into force very soon and this is the time when the grave situation of Bengal ought to be represented to the Central Government and adequate funds ought to be placed at the disposal of the Bengal Government so that they may carry on the administration and do some good to the people entrusted to their care.

Mr. SHANTI SHEKHARESWAR RAY: Rising to speak on this day one cannot but feel the historical nature of the day. I am not referring to the proceeds from the jute duty about which we have heard so much. I am referring to the traditions of this Legislative Council. This day has been looked upon with great interest since Legislative Councils were introduced in this country. I have heard from my father who was a member in the early nineties of the last century that on this day they used to come in their best dress and address the Council. Practically this was the only day on which they were expected to address the Council. Later on I know that members of the Council used to look upon this day with interest. Even 15 or 20 years ago when my brother first became a member of this Council I used to find him very much occupied on such occasions. Even on those days the members were expected to make a serious contribution on the budget on the days reserved for the discussion of the budget. But, Sir, now things are different. I do not think any member on the Government Benches or any member of this House expects me to make any serious contribution to-day. That is not the present tradition. Sir, thinking hard, I have come to the conclusion that these days are not meant for serious debates. We find, as my friend, a new member of this House and who is perhaps not aware of the present traditions of the House, was complaining, that the Government Benches are practically empty. The members in charge of the various departments were away, and he took it more or less as an insult that such things should happen. Well, perhaps he does not know that the members do not want to take us seriously and that is why they do not care to come to the Council on such a day. Well, some of them are here and by hard thinking I have come to the conclusion that the only members who expect to hear a little praise from us are present. One of them is the Hon'ble the Finance Member. Well, Sir, as I believe that to be the present tradition, I would like to keep up to it. I would like to contribute my meed of praise. I am not an expert in that line, but I shall do my best. I can frankly say that the Hon'ble Mr. Woodhead really deserves praise. It is not for the fight that he has put up for the return of the proceeds from the jute duty. That fight has been carried on by his predecessors and there is nothing much that he has done in the

matter. But he deserves praise for carrying out some of the retrenchments during the last two years. I remember the previous Finance Member, the Hon'ble Mr. Marr, stating on the floor of this House definitely, positively and with emphasis that there is no room for retrenchment. In spite of that statement, it has been possible for a hard working Finance Member to look into the matter and silently and effectively carry out some of the proposals of the Retrenchment Committee and the saving effected thereby amounts to a pretty good figure at the present moment. It required great courage on the part of the Finance Member to do that, because there are interests that would have to be pleased, but he has that courage and he has carried it out with the full support of the Legislative Council. Sir, I do not think the Hon'ble Mr. Reid expects any praise from me. He has practically left his seat. Well, Sir, as regards the Hon'ble Member in charge of the Irrigation Department, he was sitting here all along, but perhaps as no praise was forthcoming he has left, but still I would like to say, now that he will be shortly retiring from his high office, that he has deserved well of his countrymen in the administration of his department. Sir, he has got the Waterways Bill through this House and with a large volume of support. That must be put to his credit. Turning to the Transferred Departments, I find, Sir, that small men are capable of doing great things. Well, the Hon'ble Nawab in charge of the Industries Department has been really a popular Minister. I say popular in this sense that he has made an effort to carry into action some of the ideas that are popular. He has the courage to make experiments——

(At this stage the Council was adjourned for 15 minutes.)

(After adjournment.)

Mr. SHANTI SHEKHARESWAR RAY: Sir, I think the House has had enough of the Government Benches. I shall not go into details or mention further names. I shall finish on the lines of a Government resolution and thank all members of the Government for the services they have rendered during the past.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I have the rare luck of congratulating the Hon'ble Finance Member, not upon the budget he has produced—it is after all, a sad performance—but upon that great piece of good luck for him and for the province which has been announced in the papers of to-day. The long-looked-for jute duty has come to us at last, though only in part. It is an achievement for which perhaps our thanks are due to all members of the Government and to His Excellency the Governor, but, so far as it appears on the

face of it, our thanks and all our gratitude ought to go out to the Government of India and its Finance Member. Sir, gratitude has been defined on high authority as a lively sense of benefits to come. We are grateful because we expect that it is not the last act of kindness to Bengal, if you choose to call it so, or of justice done by the Government of India. We trust that the Government of Bengal will press for the claims of Bengal in the way they have done in the past and in the way which has been outlined by the Finance Member in his speech. The injustice must be wiped out not only with regard to the future grants but also with regard to the burden of debts which have accumulated on our shoulders on account of the injustice done to us in the past, and, more than that, we must have enough resources to develop the economic welfare of Bengal. Sir, I trust that this good luck—this windfall—which has come to us would not be frittered away in just getting the administration going, but that advantage would be taken of the jute duty which has come to us, of the share of the excise duty on sugar which is promised to us, and of everything we can lay hold upon, for the purpose of rebuilding Bengal economically. That is the great work before us. I have said before that the finances of India, the finances of Bengal have suffered from want of imagination; it has always been a question of counting the golden eggs that are laid by the hen of Bengal. No thought has been devoted in the past to the work of feeding the hen that lays the golden eggs. The time has come—and I believe Government has also realised that the time has come—when the question of feeding the hen that laid the golden eggs should be given some consideration, and I hope that this windfall will be utilised by the Government to the fullest extent for pushing forward the scheme for the economic reconstruction of Bengal on the lines outlined by His Excellency in his speech at Saint Andrew's Dinner and perhaps on more ambitious lines. Sir, I think I shall be right in saying that upon this programme depends our last chance of existence. If we do not stem the tide of economic deterioration that has come upon Bengal now, we shall never do so again. Bengal will not live through this crisis without some effort on the part of the Government to stem the tide of deterioration and to put the people on their legs. There is the great example set before us, the great achievement of President Roosevelt who in the course of a few months has not only checked her deterioration but has put America on a sure footing and assured her economic future. We cannot expect the Government of Bengal to play exactly the same rôle. Yet within their limits there are great possibilities for the Government of Bengal if they just make up their minds that Bengal shall develop economically as far as possible. There are great possibilities and every possibility must be utilised and exploited to the fullest extent. We are looking forward to great things from the promise of His Excellency the Governor, from the fact that

a Board has already been appointed and an officer has already been appointed. Let us hope that this Board will not be like many other Boards, that will be a real Board which will work out the economic destiny of Bengal for years to come. Sir, I am expressing this hope and I trust that it will not end in disappointment like many other hopes that have been expressed in this Council.

Sir, I will not take up the time of the Council much longer, but I shall say this with reference to the budget that has been placed before us that we can see a lot of difference between the budget of this year and of previous years. On one occasion I characterised these budgets of the Government of Bengal as the budget of a rake and likened the Finance Member to Wilkins Micawber of immortal memory. But one can see that a change has come over the Government of Bengal. Chastened by the distress, chastened by their tightened purse, or perhaps on account of the Scottish touch upon it, the Government in this budget is more businesslike than it has ever been in the past. We are thankful to the Hon'ble Mr. Woodhead for having directed his attention towards carrying out the economies as much as possible in order to balance the budget instead of relying Micawber-like on expectations of something turning up. It so happens that something has turned up in this case just as in the case of Wilkins Micawber something did turn up in the end. We hope we can trust Mr. Woodhead not to live upon hopes of that description. So far as the present budget goes, whatever its defects and deficiencies may be, it is no longer a rake's budget. It is not built upon dreams of the impossible.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, to-day is the day of general satisfaction, felicitation and rejoicing for Bengal. Only two days ago, when we were speaking on the Lotteries Bill, I was one of the persons who laid before this House the difficulties that are being experienced by the hospitals; I was saying at that time that the only salvation that lay before us was that of raising money by lotteries. But to-day I see my Hon'ble friend, Mr. Woodhead, has got a windfall. He has received quite unexpectedly a crore and 67 lakhs to add to the revenue side of the budget. Though this will not be enough to balance the budget, if the terrorists would cease their activities and the Government could reduce the special expenditure that is being incurred to suppress terrorism, our budget will be balanced. When I speak in this strain, I believe my appeal to the terrorists will not go in vain, and they will cease their activities, giving us an opportunity of showing a balanced budget for Bengal. As the Hon'ble Mr. Woodhead was speaking the other day, the debt we are now incurring, just for carrying on the ordinary administration of the country, from the Government of India should be remitted by the Government of India when the new constitution will come into operation. I was really thinking that he was an idealist, a dreamer and a poet, but I now

see that he is not a dreamer, or a poet. He is a person with sound knowledge of finance and of the ways of human mentality. He probably thought that our case was so just that the Government of India would not hesitate to remit the debt incurred for carrying on the ordinary administration of the country. We have hardly any money left for the development of the country. I say so with the full knowledge of the fact that the country wants development in the matter of education, sanitation and medical relief. When I see my friend the Finance Member has not got sufficient money even after this windfall to balance his budget, I do not know when our financial position will recover to enable us to give effect to the Primary Education Act which is now in the statute book but which has not yet come into operation. Mr. Thompson was speaking in the same strain when he said that the Primary Education Act should begin to function now. Rural Bengal requires some development in the matter of primary education. This matter of primary education has been placed before us all by the previous speakers, and if I may be permitted to mention His Highness the Aga Khan has also made an appeal to all of us that the Primary Education Act should come into operation and money should be provided for carrying out the provisions of that Act. Next comes sanitation. Tons of money will be necessary to make Bengal really worth living. If you want to get rid of malaria, kala-azar and other preventible diseases you require tons of money. Where will that money come from? Then comes medical relief. I believe we have already made out a very strong case for better provision to be made in our budget for giving medical relief to the people, and I do not like to continue the argument that I brought forward before this House just two days ago. I hope that when the budget is revised, sufficient money will be forthcoming for medical relief, especially for the hospitals of Bengal. Sir, with this financial distress before us and when we see that even this windfall of a crore and 67 lakhs will not solve the problem, we are really in a dreadful dilemma. I do not know, Sir, how to suggest a remedy. A gentleman like the Hon'ble Finance Member who is thinking over the problem day and night will probably like to see Bengal in a prosperous condition and he may suggest the remedy. Sir, I am speaking because I know there would not be any division in this House on this question.

Now, Sir, I see the excise revenue which is one of the main sources of our income has gone down quite disproportionately, and I do not know what is the exact reason of that fall. I do not believe that a magic wand has actually converted the whole mentality of the drinkers and drug-takers of Bengal: that has not happened. Something more will have to be thought of than this magic wand. Drinking is there, drug-taking is also there; then why has our excise revenue fallen? I do not find the Excise Minister here; if his Secretary is here, will he take note of whatever information I give to

this Council. It is this, that practically the whole of West Bengal has become the manufacturing centre of excisable articles. (A voice: "Question.") My friend questions. He does not live in West Bengal, nor is in touch with West Bengal. My own information is that almost every household has got a new method of manufacturing wine.

Khan Bahadur MUHAMMAD ABDUL MOMIN: What about Jalpaiguri?

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Jalpaiguri is not an exception perhaps. So the Excise Minister should take this hint and try to find out if with further surveillance he could not increase the revenue under this head. It may or may not increase; but my point is, if you exercise more vigilance and control over the manufacture of illicit drugs and liquor you can increase the revenue. That is one thing that I want to suggest, and I think I have said everything that I had to say. I congratulate my friend the Hon'ble Mr. Woodhead for the way in which he fought out Bengal's case and in doing so I should not forget all those others, especially the members of the Joint Select Committee as well as of the Round Table Conference who have successfully fought our case in England. Our thanks are due to them and our thanks are more especially due to the head of the administration who has also contributed to the efforts of getting our right share from the Government of India. I hope and trust that the present effort will not be relaxed and a case will be made out not only for the Government of India but also for the Secretary of State to show that Bengal cannot go on with the finance that is at present allotted to her. Bengal is to grow; if Bengal is to grow, Bengal will have to get at least four crores from the Government of India. Then and then only the Government of India could expect us to be contented and not before that.

Maulvi TAMIZUDDIN KHAN: I congratulate our popular Finance Member and the whole Government of Bengal as well as ourselves on the rare good fortune in having at least half the export duty on jute for Bengal for the coming year. I join the Hon'ble Mr. Woodhead in expressing our heartfelt thanks to the Government of India for giving us this share of the jute export duty, and I draw comfort all the more from the speech of the Hon'ble Sir George Schuster when he says that this does not mean that in future Bengal will not get the whole of the jute export duty for herself. But, Sir, the question arises what is going to be done with this money? The shrewd business instinct of our Finance Member will surely say that the money must be spent for wiping out the deficit of Rs. 2½ crores that we are faced with. That may be a sound proposition, but the

comfort that we drive from such a proposition is entirely of an administrative character. It is only a comfort from the auditor's point of view. The question is whether it is also going to be a comfort to the people of Bengal whom we represent here? Is it going to be a comfort to the jute-growers of Bengal? Is it going to be a comfort to the cultivators of Bengal? If this comfort is going to be a real comfort, it should be such as may be shared by the people who are really responsible for the production of this large revenue to the Central Government and for the first time for ourselves for the coming year. It is therefore necessary that a portion of this money must be spent for the benefit of the jute-growing population. Unless that is done, the comfort—the pleasure—that we are feeling to-day will not be shared by those whom we represent. I hope the Hon'ble Finance Member will bestow his sympathetic attention to this question. We recognise that the Government of Bengal has been earnest of late in doing something for the rural population, particularly for the amelioration of rural indebtedness. They are also showing some activities in some other directions. But on account of scanty finance, Government have not been able to do much, and it is very scant comfort for us to find that the proposal is to start for the time being only five land-mortgage banks for the whole of Bengal and for that, if I remember aright, only a paltry sum of Rs. 40,000 has been allotted. Is it not time to consider whether a fair portion of this jute export duty should be spent for starting at least one land-mortgage bank in every district of Bengal? That will not be too much to ask. It will not require a very large sum. If only 40,000 rupees is necessary for starting five land-mortgage banks, a large sum will certainly not be necessary for starting one such bank in each district. I suggest, Sir, that a portion of the money that we are going to get should be spent for this purpose.

Now, Sir, Mr. Thompson and Maulvi Abul Kasem and several other speakers have referred to the necessity of primary education for our province. So far as this is concerned, the Government does not seem to have taken the question seriously. Whatever question Government takes up seriously is always capable of solution, and I will presently show that in spite of the present financial difficulties Government are going to undertake things which are expensive and not indispensable. If the Government are really of opinion that primary education was necessary for the province, I think in spite of our financial difficulties, in spite of the dark outlook, they would have done much more than they have actually done. The Government has hitherto grievously failed to recognize the great truth that primary education for this country is the veritable philosopher's stone that can turn everything it touches into gold. Government to my mind is adopting the policy of a class of village quacks in solving this great problem. There is a sort of village quacks who pretend to cure people of various diseases with incantations and *mantras*. Illiteracy is a primary disease of the

body politic and people are raising cries that without free and compulsory primary education this malady cannot be cured. Government has failed to provide the real remedy and has like the village quack given us an incantation in the form of Rural Primary Education Act, which they have no intention to enforce. Similarly the improvement of the waterways of Bengal is another important question on which also depends to a large extent the future good of Bengal and the Hon'ble Sir A. K. Ghuznavi has, I am afraid, given us another incantation in the form of the Waterways Act, which I am afraid is not going to be enforced until Bengal is dead. I hope, I shall prove a false prophet and the Hon'ble Member will be able to fulfil the pledge he has given us within a short time. No quack remedies and incantations will cure the ills of Bengal. Something real should be done: some real remedy needs be applied and that in the near future.

Sir, it is to be found from the speech of the Hon'ble Finance Member that more than half a crore (Rs. 53 lakhs) has been allotted for fighting terrorism during the coming year. My blood boils within me when I contemplate that poor Bengal, depleted and starving Bengal, has to spend as much as that for fighting anarchism and terrorism. It cannot be gainsaid that terrorism is a danger which is by far of a different character from other political movements in Bengal. It is far different from either the civil disobedience or the non-co-operation movement which are directed only against the present Government. But so far as terrorism is concerned, it is a menace not only to this or that administration, but to Government *per se*. It is an enemy to society itself: it is an enemy to civilization. Therefore, I am prepared to give my wholehearted support to any legitimate measures that are necessary to fight anarchism and terrorism. But when I look at the sum—Rs. 53 lakhs—something within me raises the suspicion that some money is being misspent somewhere. (A VOICE: "Why some, the whole of it?") Well, my suspicion is that some money is being misspent. It is also, Sir, a disquieting fact that this statement of the Hon'ble Finance Member may prove to be an indirect encouragement to terrorism. The terrorists want to destroy the Government in many ways: they want not only to do away with the Government officials but also perhaps they want to make Government impossible financially. This year it is 53 lakhs; next year it may be one crore, and in this way the expenditure on fighting terrorism may so increase as to make the Government financially impossible. Therefore, it is only necessary and I think Government also thinks it quite necessary that every possible economy should be aimed at so far as expenditure on this particular head is concerned. I must make my position clear. Perhaps I have spoken in ignorance, but what I meant is this, that although terrorism must be fought at any cost and if more money is required, that must be provided yet when we look at the huge sum a suspicion naturally arises in the popular mind to which I have referred. I would like to

conclude my remarks by referring to one other crying demand of the Moslems of Bengal. That is also with regard to the Education Department. We on the floor of this House have been crying hoarse for several years together for the establishment of a school for the education of Moslem girls in Calcutta. Although we have received time and again promises from the Hon'ble Minister, it is very unfortunate that practically nothing has been done. So far as this demand is concerned, I want to make our position clear on the floor of this House. Our colleagues belonging to our sister community think that there is no such necessity. Sufficient replies have been given to this question on previous occasions. The members of this House surely know that the Moslems have a special culture of their own and no education, particularly of a Moslem girl, can be said to be complete without the learning of Arabic or Persian. Unfortunately, so far as the existing girls' schools in Calcutta are concerned, there is scarcely any provision for giving instructions in these subjects in the schools run by other communities and what is all the more strange there is no provision at all for the admission of Moslem girls, in an institution—I mean the Bethune School which is run at Government expense. I do not like to reopen that old question. Our demand is that we want a separate school, and for this reason that to my view our girls are not being taught in the right direction. We want them to be taught under Moslem environments. So far as this is concerned, I am sorry to say that the girls of our sister community are also not being educated in the right direction and the elders of the Hindu community also, at least many of them, agree in thinking that the line in which the education of Hindu girls is proceeding is not the right line. The West is reaping the evil fruits of the education which is prevalent there. Here in India we are making a slavish imitation of a system which has already created havoc in the West, and it is time that we must cry halt and chalk out some new line which is in consonance with our peculiar civilization and culture. It is for this reason that we demand a separate Moslem girls' school in Calcutta. I hope the Hon'ble Minister will pay a little more attention to this burning question, and try to give us something in a tangible shape in the near future.

Maulvi SYED MAJID BAKSH: A certain schoolboy was a little spendthrift. He had his remittance from home but had spent it all no sooner than he received it, and while he was expecting another remittance near about his holidays he did not write home for more money. All the same he needed money and therefore he pawned his suit with a pawn-broker. In the meantime, his money arrived and he got back his clothes and went home for the holidays. While at home his mother helped him to unpack and while doing so she discovered a ticket on the coat, the pawn broker's ticket, and asked what it was. The boy answered that he had been to a dance and as he left his coat

in the cloak-room, it was the cloak-room ticket that she found on the coat. No sooner had he said so, she discovered another ticket on his trousers and, being horrified, asked what sort of a dance it was that he left his trousers in the cloak-room. That must have been the feeling of the Finance Member when he presented the budget last week.

The Hon'ble Mr. J. A. WOODHEAD: Sir, I must protest against that.

Maulvi SYED MAJID BAKSH: He had to do this performance with a depleted budget and that performance never promised to be more comfortable than the one which I have just described. But perhaps on account of the effort with which he has fought with the present deficit, the courage and fortitude which he has brought to bear on the hopeless finance of this country, and the perseverance which otherwise would have demanded his meed of praise from far and near, Providence looked up to him and like the Christian of John Bunyan he found his shore again. The announcement of to-day declares that in order to make up some of the deficit the Government of India are going to give a share of the jute duty. While this has been acclaimed with joy from all quarters of the House, I myself feel diffident. I find from the budget that the Finance Member is borrowing for the next year 2¼ crores to balance his budget, and I do not know whether in addition to this 2·26 lakhs one crore and sixty-seven lakhs would be given to him or this one crore and sixty-seven lakhs will form a part of this two crores and twenty-six lakhs. If that is so, I find no reason to rejoice, because in the past years the Finance Member has borrowed a sum near about two crores to balance his budget. He will have to do the same this year as well, only the amount at his credit will be written not two crores and some odd lakhs but about 50 lakhs. I doubt very much that while the Finance Member was borrowing year after year, he ever intended to pay it. He was always expecting this duty or that duty and that he would be able to make the Government of India write off all the debts incurred by him in order to meet deficits. The prodigal goes on borrowing without ever repaying.

Coming to the various items, I find that the deficit is almost equal to an amount of demand for grant on one head only. Even that demand exceeds the deficit. I mean the grant for the police. That accounts for the whole deficit. It seems, therefore, if we dispense with the department of police, we can dispense with the deficit. Figures have their own meaning and those who can read figures can come to their own conclusions. One of my friends has remarked that the huge sum is required to combat terrorism. For a moment I do not at all fight with him nor argue the point whether terrorism is to be suppressed or not. The only thing I wish to stress upon is that whatever we do we must do within our means so that we may not have a deficit. If

you have a deficit, the likelihood is that you cannot carry on your work further and you will have to leave it unfinished somewhere some day. Therefore, a good budgeting would be to make two ends meet anyhow. Give the greatest and largest amount to the police, but make it within your means. Terrorism has to be fought and the police has to be given large sums of money. I do not dispute that. But when I find that expenditure under that head is going up by leaps and bounds, it is time for us to pause and think. The business of the Finance Member is to supply funds when funds are demanded from him. He has no business to see whether that fund is being properly applied or properly demanded. His business is to see that the funds are supplied as demanded by the department. I would, therefore, suggest through him to the Member responsible for this big sum that some such method should be found by which this amount could be brought lower than at present. You might employ your secret service in a more economical way, you might employ your Superintendents at a far less cost than you do at present. You can have your eyes on this department and put your foot on the Bills that are presented to you and ultimately see that you bring it within your means.

As regards education, I would have thought that this one crore and sixty-six lakhs would go swelling or rather meeting the needs of the Transferred Departments. Of the Transferred Departments, the Education Department stands most in need of help, because I would say that by this department we will be able in some way or other to fight terrorism in the long run. By managing our education in such a way, by giving education in such a way, by utilising the products of our education in such a way as to meet the exigencies of the situation I think we can somehow or other meet the situation. Sir, I was thinking when I first heard of this announcement that at last we have got this money by which we shall be able to carry out the Primary Education Act which is lying shelved in the archives of the Secretariat except for four or five districts. But, as I have said, this windfall is more illusory than real. It will be deducted from the amount of loan which the Hon'ble Finance Member has demanded from the Government of India. It will not be given in addition to the loan, but as part of it. In that sense I find that this grant is hopelessly inadequate and does not meet the situation. I think persistent as we have been in our demands, persistent as the Finance Member has been to press our demands before the higher authority, he will not relax his efforts, but we hope that he will press our demands all the more forcefully. (A VOICE: "Or non-co-operate.") Well, if my friend reads the high philosophy of life and poetry he will find that non-co-operation has a meaning.

Sir, much has been said about the inelasticity of the sources of our revenue. Exactly so; it is for that reason that we are not in a posi-

tion to meet the exigencies of the situation. Some remarks have been made about want of vigilance in excise matters because the vigilance does not go far enough. There are certain things which, if we extend the meaning of excisable articles a little further, will bring much revenue. For instance, take the case of cigarette. Why not bring it within the Excise Act? That will bing, some revenue. You can impose duties on various other sources which are of an intoxicating nature and which come within the category of narcotics. (A VOICE: "What about tea?") Well, tea does not come within the category of narcotics. There are tobacco and other things which can be easily taxed. If you tax opium, if you tax hemp, why not tax tobacco? Any doctor will tell you that tobacco contains an alkaloid which is as much narcotic as other things, and I would request the Department of Excise to consider this proposition. I would not go further, although I would like to say that by stretching the meaning a little further you will derive much revenue. Take for instance, *pan* (A VOICE: "Is it a narcotic") My friend will kindly remember what is meant by excise. Why do you call salt excise? That which cuts down the use is called an excise duty. I have seen people chewing *pan* all day long. I have seen men doing it for nothing. It serves no useful purpose. If you use it for medicinal purpose, you can use it two or three times a day. Hence a duty may very well be imposed to bring revenue.

(The member having reached the time-limit resumed his seat.)

Babu SATYA KINKAR SAHANA: Sir, after carefully considering the budget and the budget speech of the Hon'ble Finance Member, I have come to think that it is no use either congratulating or condemning the Finance Member. He is too much encumbered with a deficit budget to think of these conventional commodities. But, Sir, I would rather like to congratulate him for the sympathetic way in which he has identified himself with the misfortune of Bengal and the stubborn fight that he has presented for redressing some of the injustices that have been perpetrated on this unfortunate province. Sir, some of my friends here have showered thanks on the Hon'ble Finance Member and on the Finance Member of the Central Government for the beggarly dole that has been doled out to Bengal of one crore sixty-seven lakhs. Sir, I look on it from another angle af vision. It is only a part payment of the immense debt that the British Government in India owes to this province of Bengal. Sir, the Britishers came here not to found an empire; they came here to make money as traders, and they established one of their best factories in Bengal; not only the Britishers, but also the French, the Dutch, the Portuguese, all came here only to make money. All this shows that Bengal was a prosperous country at that time. But after two hundred years of administration of a prosperous country by one of the most civilised nations of the world, Bengal

has been brought to the verge of insolvency. The question arises in my mind where the blame should be laid, at whose door the blame should be laid. Sir, I am not a scientific or a philosophical historian, and I am not going to excavate the Mahenjo Daro of the past history of the province, but I cannot help thinking that there must be something rotten in the State of Denmark. I am concerned with the present, not with the past. At the present moment, is the Government following a very prudential way? We have learnt from the English language with the help of dictionaries and other books of reference the proverb that one must cut his coat according to his cloth. That is a prudential course; but has our Government done so? The Retrenchment Committee's report has been retrenched and retrenched out of shape, and the report of the Lee Commission, which some of my friends would like to designate as Lee loot, has been given effect to. Even at the present moment some sinecure posts with high salaries are being created to be paid from money collected from the half-starved millions of Bengal. Sir, even in the present budget we find that the police grant has swelled up enormously and the reason that has been put forward is that there is terrorism in the country. I cannot deny that terrorism is a great menace to this country and it should be tackled anyhow. The Government has no choice in the matter; but, Sir, repression and taking up of more power by Government will not cure it. I admit that there is a class of people who are irreconciliable, who are not amenable to reason or amenable to conciliation, and strong measures should be taken against them. I hold with my ancient forefathers to the proverb বিষস্য বিষমৌষধম্ poison is the cure for poison; but at the same time I hold to the Sanskrit saying বিনিমিত্তা কৃতা শান্তির্নিমিত্তমুপজায়তে when there is no disease, if any cure is applied, the cure will bring in the disease. I ask, Sir, where is this terrorism? Is it as immense in reality as it is in the minds of the administrators of the country, or is it the thick mist that is lying between the people and the administrators that makes them both look at each other as hideous monsters? I think that if measures be taken to thin away this mist and bring the people in closer touch with the administrators, they will look upon each as their own brothers. Sir, it is off and on asserted by the administrators that Bengali Hindus are sympathisers of terrorists, that Bengali youths are vowed to the cult of the bomb. I say, Sir, that the Hindus are not all terrorists, they are not all sympathisers of terrorism. I come from a rural constituency, I live in rural areas, and I know the rural people. They are a helpless lot, they are dragging on a cheerless existence under the burden of ignorance, want, and so many diseases. They have nothing to cheer them up. They have no enjoyment, no excitement, but they are intelligent, they feel their position; they are a bit sentimental, they feel they are living a life which is not desirable, and, therefore, Sir, whenever anyone approaches them with any new theory of life or philosophy or politics, howsoever topsy-turvy or however

illogical it may be, they at once take to that, at least for the purpose of an innovation of a little enjoyment. It is no fault of theirs. If the District Officers during their tours instruct the union boards to convene meetings of the people so that they may interchange thoughts with them and advise them how the problems facing them can be solved, I think the mist that is lying between the rulers and the ruled would be thinned away and there would be peace in the country. If this policy be followed, then I think in no distant time this unseemly tug-of-war will end and peace and prosperity will come back to the country. But, Sir, if instead of the policy of taking the people into the confidence of Government, this policy of repression alone be followed, I think in no distant future the Government shall have to cry in the language of the Baishnab poet পিতল কাটারী, কামে নাহি আওল উপরহি ঝকমক সার= It is a hatchet made of brass, glittering on the surface, but has no edge to cut.

Sir, I think it is high time to bury the hatchet and to do that the Government should make the first move. Let the Government make the first move in breaking the ice, and approach the people in the rural areas, and they will find that there is no terrorism in the country. It is limited to only a few dozens or a few hundreds of sentimental and misled youths of the country. I was just speaking about the way in which money is being spent in the province. Reconstruction of the villages has been taken up by the Government, and a new department has been started, but the Board that has been formed for the reconstruction of the villages has not a single member who knows anything about the rural areas. We all know that 95 *per cent.* of the people of this province live in the rural areas and that the life and outlook on life in the villages are not what they are in the urban areas. I think there should have been representatives of men on that Board, who work among the villagers. Though the Primary Education Act is on the statute book, even partial effect has not been given to it; only a few thousand rupees was spent in that connection. As my friend Maulvi Tamizuddin Khan said, primary education is essentially necessary for the improvement of the country and it is ignorance which is at the root of all our evils. As Sankaracharya said, "*avidya*", *i.e.*, ignorance, is the root of all our evils. Government should make a move to drive ignorance from the masses. The present system of education in our schools and colleges has created a division amongst us. In this caste-ridden country of many hundreds of castes, two more castes have been created, namely, the educated and the uneducated; and even in our own homes, we have got two castes, the men who are educated and the women who are not. I have been crying for the last three years for female education in my district, but the Hon'ble the Education Minister has turned a deaf ear to it. In our homes an educated husband feels, as has been rightly depicted by poet Rabindranath in his "Nababashare Bangabadhu," one is thinking of Milton, Bentham and

others, and the other worshipping Shashti, Sil and Nora and thinking of her পোষামেনী and টোপাকুল. This is creating trouble in our domestic life. After all, I think the budget should be so prepared as to fit in with the present depressed condition of the province, and the strictest economy should be observed in spending every pice of the famished revenue of the province.

Mr. P. BANERJI: Mr. President, Sir, I was not in the House for about an hour, but I was present when Mr. Thompson spoke. He rejoiced at the windfall of Rs. 1,67,00,000 to Bengal. It may be a matter for rejoicing on the part of Mr. Thompson and his group, but I must tell them without fear of contradiction that there is no rejoicing on our part, and why? Because this Rs. 1,67,00,000 has been robbed of us, and we have only got it back, and that even is only 50 *per cent.* of what is legitimately our due. I say in the words of the great Prophet—give unto Cæsar things that are Cæsar's. There can be no rejoicing, Sir, for getting back only 50 *per cent.* of what was long overdue.

Sir, I have always said that the way in which the budget is prepared shows that the tax-payers' money is simply wasted by Government. To-day, I am glad to find that Mr. Tamizuddin Khan, whom I do not find here now, and some other members who have always been supporting Government, are now of the same opinion. I say again, Sir, that the whole amount budgeted for under the head "Police" is going to be purely wasted. I do not find the Hon'ble Member in charge of Police here, but I know that in spite of our repeated requests to change the Government policy, it is certain that there is going to be no change. The old policy will be continued—and what is that policy—that law and order must be maintained at any cost. I say, Sir, that law and order can be maintained and terrorism killed with much less money if only Government would properly study the situation, mix with the people and co-operate with them. But Government will not do that. Sir, it has been said by most of the members of the House to-day that there is going to be a huge waste of public money. It is evident that there will be more oppression both by the police and the military in the countryside. Therefore, there can be no rejoicing on our part, and so far at least as this side of the House is concerned, it is rather a period of calamity through which we are passing.

Sir, Bengal's money would have been well spent if it had been given to the Minister in charge of Agriculture and Industries. A nation is known by its trade and industries. Sir, we stand condemned in the eyes of the world, and why? Because our present abject condition is the result of our exploitation by foreigners for 200 years. That is the situation we have got to face to-day, but it is a fact that——

Mr. PRESIDENT: Order, order. It is time now for adjourning the Council for prayer. You may speak after we re-assemble.

Mr. P. BANERJI: Alright, Sir.

(The Council was adjourned for 15 minutes.)

(After adjournment.)

Mr. P. BANERJI: Sir, I was just telling the House that more money means more oppression in the country. Sir, it is naturally expected when the Hon'ble Finance Member made the statement in the beginning of his speech that this 167 lakhs of rupees would be spent in such and such manner, but without that we came to the conclusion that this money will only be spent to wipe out the deficit. If that is the position, there is nothing to be rejoiced at. We must at the same time look at the other picture. Sir, to-day when I went out I met an Advocate of the High Court. Now, he was telling me that just a few hours ago he purchased a match at one pice which even a day or two ago could be had for half a pice. Perhaps you are aware, Sir, that tax on safety matches manufactured in India is Rs. 2-4 which will bring in about Rs. 230 lakhs revenue. All this money will be obtainable from Bengal because Bengal to-day manufactures the largest quantity of matches, and, Sir, from that quantity alone a large sum may be obtained, not to speak of sugar.

Sir, it is gratifying to note that the Government in the Industries Department was making very useful propaganda regarding sugar manufacture. We have it from the Hon'ble Minister in charge of Industries that demonstrations are going on regarding sugar manufacture and already about 50 mills have been started in Bengal.

At one time this industry was very popular in Bengal, and Jessore district was the centre of it. There were about five thousand sugar factories. But by the foreign competition the whole industry died out and Bengal which used to supply sugar to the rest of India at one time is now starting anew this industry. I am glad to find that Government in the Industries Department has again started the propaganda and succeeded in establishing 50 factories so far, and they have thus provided batches of unemployed young men. It is understood from the Hon'ble Minister that so far about 28 batches of men have been provided for in this way. It is gratifying to note that in this way they are trying to educate the people and solve the unemployment question. Sir, I could understand if this 167 lakhs of rupees was spent towards the industries of this country. But there is no assurance from the Government that this will be done. Maulvi Tamizuddin Khan has rightly said that although a good start has been made by starting five land mortgage

banks and it will no doubt do some good to the province, it is quite inadequate and more such banks are needed. I must say that the Industries Department of all the other departments of Government is badly in need of money in order to carry out the experiments and demonstrations of which we have heard in this Council from time to time. More money is certainly required for giving State aid to industries; but Government do not move in this direction. Sir, instead of congratulating the Finance Member I am inclined to congratulate the Minister in charge of Agriculture and Industries. The State aid to industries was started by him, and he himself paid money from his own pocket and also secured some gentlemen who paid money for this, so that Government had to give last year one lakh of rupees for State aid to industries. Last year I said that one lakh of rupees is nothing to start such industries in Bengal: it is only a drop in the ocean. I said then and also say now that several crores are needed. Now, we have this windfall of Rs. 167 lakhs. I would ask the Hon'ble Finance Member to pay at least a crore out of this sum to the Industries Department. Supposing we had not got this money; as Maulvi Tamizuddin Khan has said, it is only a dole and comes quite unexpectedly. If we had not got it from the Government of India our position would remain as it is, and Government had to manage without it: then why not give a substantial portion of sum which comes as a windfall for State aid to industries? I have often said and say now that the intention of Government is not really to do good to the people. The Government, although they are showing a deficit budget, had done nothing towards effecting real economy. What about retrenching the number of Executive Councillors? Still Government have four Members. On many occasions it was suggested that the number of Members of the Cabinet should be reduced. It was suggested by Maulvi Tamizuddin Khan and by Mr. Sahana that strict economy must be effected. I say the real economy will be to retrench the number of the Executive Councillors from four to two. We know, Sir, that there is no work for four members and two are sufficient for managing the administration—two members with their Secretaries will be sufficient to manage the administration. But that is not the way of the present Government: the top-heavy administration must continue for all time to come. Nothing is being done for the departments for which they justify their existence and draw such huge sums; I must say this is sheer waste of money and this waste of money must not continue. Sir, I can say without any contradiction that Government do not want to do any real good to the people of the country; otherwise, they would not hesitate to curtail this top-heavy administration and allot money for the nation-building departments.

Sir, sugar and matches have been taxed, and may I inquire for what reason? The Hon'ble Finance Member suggested in course of his budget

speech that taxes have to be imposed to make up the deficit. Why not communicate with the Central Government and say that the people of Bengal are dying and they are overburdened not only with taxes, but they do not get marketable value of their productions? Eighty-five *per cent.* of the population of Bengal live on cultivation. They spend a large sum of money for growing jute and other crops, but unfortunately they do not get any price for them nor do they get any market for their productions; their labour goes practically without any return. Government, if they so like, could at once raise the price of jute and thus save them, but they will not do so and will not move an inch in that direction. All they will do is to see that law and order is maintained. The Hon'ble Finance Member in his budget speech has emphasised the necessity of the maintenance of law and order and said that law and order must be maintained at any cost. But have you been able to maintain law and order at all cost?

Sir, I have often gone to the country side and seen myself what is going on there; in the name of maintaining law and order, in the name or eradictating terrorism, how this huge waste is going on. I have been supported by some of the members in my view that the picture given by Government does not really exist——

(The member having reached the time-limit, resumed his seat.)

Rai Bahadur JOGESH CHANDRA SEN: Sir, the budget, whether we wholeheartedly welcome it or not, is before us as usual and we have to pass it with our suggestions only. We regret, however, to note that our suggestions are treated as academic discussions only, as will be seen from the various provisions in the budget which goes on in its own *mamuli* way.

I find in the budget that there is no push or dash from any department. Still I congratulate our Ministers that they could keep grants for their departments somewhat intact. If you really want to do good to the country, put more money in their hands and build up the nation. First of all save the people from the jaws of death by fighting out the epidemic and other fell diseases. Improve the sanitation of the country and make it fit to live in. While I say this, I do admit that something is being done by the Hon'ble Minister of Health with the small amount in his hands. Next take up Education: unless our countrymen are properly educated, we cannot expect any improvement, so more money should be spent for this. In Bengal 85 *per cent.* of the people are agriculturists and the small sum given to this department for effective work is very very small. Several lakhs of rupees are required if substantial improvement is really desired.

Next is industry. If you really want your people to be happy and contented, make them wealthy. By encouraging cottage industries, you can really do wonders. Our Minister in charge of Industries has

made a small beginning and he deserves our best thanks, but that is not enough. Our Minister of Health is to be congratulated for his Malaria and Sanitary Circle schemes, but lot is yet to be done.

Sir, police expenditure is on the increase, and Government thinks it necessary for the maintenance of law and order. But time has come to think seriously whether the policy of repression should be revised or not. I would say—win the people over by love as ours is the land where people can be won over by love. As to our receipt, we are under a handicap. I mean the receipt from jute. Other people are enjoying the cream while Bengal is burning. Sir, what do we gain by showering blame upon the head of the Hon'ble Mr. Woodhead. He has done his best, the constitution is defective and what can he do? But I must say he is somewhat stingy. He could, I think, give more to the nation-building departments. I hope our three Ministers will give him a right royal fight and win the prize of Rs. 50 lakhs or so for the Department of Health and Industries and Education. Make your people healthy and wealthy and all our present troubles will soon be over. Let the budget show that there are provisions in the budget which would do real good to the country and that the budget is not for meeting the high establishment charges and police only. I do not believe in abuse; it creates a feeling only. As we expect Government to win over the people by love, we on our side should show the same. Love begets love and hatred begets hatred. Let us choose the former.

Before resuming my seat, I thank the Hon'ble Member in charge of Irrigation for providing some money for Bhangar and Kristopur Khals. This will remove a longfelt want.

MUNINDRA DEB RAI MAHASAI: Mr. President, Sir, I could hardly believe my eyes when on opening this morning's papers, I found the welcome news of the Hon'ble Sir George Schuster's proposal in the Assembly about allocating half the jute tax to Bengal amounting to a crore and 67 lakhs of rupees. Government in this country is very slow to move. When we heard the speech of the Hon'ble Mr. Woodhead while introducing his budget estimates for 1934-35 about the financial injustice done to Bengal about a week ago, we could not then imagine that the Government of India should be so prompt as to make such an early announcement. Of course, we are thankful for this bare piece of justice.

Sir, the revenues of Bengal are inelastic and are hardly sufficient to cover the cost of administration for which we are having deficit budgets year after year. The revenues of Bombay are 15 crores, of Madras 17 crores, while Bengal has got to manage with 9 crores. It is impossible for the nation-building departments to expand with such a limited income. The primary duty of Government is to keep alive the province, but they have miserably failed to do so. This was partly due to lack

of funds—the want of necessary initiative is of course the chief cause. The other day, while moving my resolution on the irrigation problem of Bengal, I emphasised the fact that this deplorable state of things was due to the culpable negligence of Government. The dead and dying rivers spoke for themselves. Had they been kept alive, Bengal would have presented a different aspect. The Waterways Bill will not go very far. Waterways appertaining to trade routes may be benefited to a certain extent. It may help navigation in certain areas, but that will not solve a fraction of the problem with which we are confronted.

Sir, health is the first thing needful. The province has become notoriously malarious. Owing to economic distress, the majority of the people are unable to get nourishing and substantial food and consequently they have lost the power of resistance from attacks of malaria and other fell diseases. They become easy prey to malaria, kala-azar, cholera, tuberculosis and other preventible diseases. But, Sir, no serious attempt has ever been made to go into the root cause of the maladies with a view to exterminate them from the province. Free distribution of quinine and plasmochin alone cannot bring in the required remedy. If we look back to other countries in Europe and America, what do we find? Pestilential areas like Campagna and Panama and such other places have been converted into health resorts. The reason is not far to seek. Money has got to be spent in the right direction. It was a question of life and death to the people and should not be lightly passed over. The nation must be saved at any cost.

I am glad to find my esteemed friend Mr. Thompson pressing the Government to make adequate provision for free primary education. This is as it should be. Liquidation of illiteracy should be the watchword of every civilised administration. There is no hope for a country where the majority of the people were engulfed in ignorance. It was simply disgraceful to think that although we are living under a civilised Government for about two centuries, illiteracy should continue to reign supreme. Two centuries is no joke. A Government which cannot liquidate illiteracy of 93 *per cent.* of the population in two hundred years stands self-condemned. Had the problem of illiteracy been properly tackled and sincere attempts had been made to liquidate it, the country would have assumed a different appearance. The Reforms would be a mockery if 93 *per cent.* of the population remained steeped in ignorance. The task though gigantic is not formidable if taken in hand in the right spirit. Pray do not misunderstand me, if I make a passing reference to the educational activities of Soviet Russia. In the five years' programme formulated by the Soviet Government, they have succeeded in liquidating illiteracy of 90 *per cent.* of the population within five years and complete liquidation is well within sight. The marvellous achievement of Soviet Russia should be an eye-opener to our civilised administrators. What they have done in five years, cannot

our Government do in the next fifty years? Pray make an honest and sincere attempt to liquidate illiteracy from the land.

Sir, the other day our Finance Member, the Hon'ble Mr. Woodhead bemoaned that the activities of the terrorists and the civil resisters have compelled the Government to abnormally increase the expenditure on law and order in these days of financial stringency. I quite agree with him that law and order were essential for ordered progress of society and for sound administration. Terrorism is a canker of society and should be put down with a strong hand, and this Council has not been slow in arming the Government with all sorts of weapons and placed at their disposal any amount of money that they asked for fighting the menace of terrorism. New weapons have been forged in each session of the Council, but may I ask, Sir, had such measures succeeded in rooting out terrorism from the land? The answer would be an emphatic "no." From this it would appear that the remedy so far applied is not the correct one—the disease required careful diagnosis. We had enough of quack treatment and patent medicines like repression are not always effective. You should seek the root cause of the disease. Nobody can deny that there is widespread discontent in the country. Economic depression has helped to aggravate it. Why not make a serious attempt to tackle this problem of problems. I am glad that the Government is trying to do something in that direction by the appointment of an Economic Inquiry Committee, a Rural Development Commissioner and the opening of land mortgage banks. This is no doubt a move in the right direction. Open out new avenues of employment. Industrial and agricultural development are the crying needs of the people. As Mr. P. Banerji said, a lakh for industries will be like a drop in the ocean. At least a crore is needed to give it a start. Open out the door for entrance into the army to the children of the soil. Trust them, and it is sure to be reciprocated. Remember that trust begets trust. If you trust the people, I verily believe that terrorism will be a thing of the past. It will then no longer tarnish the fair name of Bengal. With these few observations I resume my seat.

Khan Bahadur Maulvi EMADUDDIN AHMED: I hasten to congratulate the Hon'ble the Finance Member on his good luck in having half of the proceeds of the jute duty. All the more I congratulate the Finance Member of the Central Government for the sympathetic treatment he has accorded to Bengal. Furthermore, there is hope in his speech for more concessions to be granted to Bengal. Now, I wish to draw the attention of the Hon'ble Ministers to certain points which to my mind are very important. The cattle farm at Rangpur has been abolished. This farm had been doing immense good to the peasantry of North Bengal. It is regrettable, Sir, that Government have thought fit to abolish the farm. Those who are in touch with the country people

know how much good has been done by the stud bulls supplied from this farm. I hope the Hon'ble Minister in charge of Agriculture will see that several farms keep to cattle-breeding and the peasants continue to be benefited by it. About sugarcane cultivation, I want to give a little warning so that it may not share the fate of jute. No doubt it has produced a little benefit to the cultivators and they have taken to sugarcane cultivation to a large extent, but a sufficient number of sugar mills have not been established in Bengal and the result is that they have not been able to get the proper price. In my district the price was fixed at 4 annas per maund, but the millowners have been purchasing at 2 annas per maund. What I mean to suggest is that the Hon'ble Minister should see that the sugarcane cultivators make some profit. I am rather sorry to hear that some duty is going to be levied on sugar. How far it will benefit the people is rather difficult to say. I suggest that Government should see that no tax is levied on sugar. Next, I should like to point out that the country is at present suffering much from kala-azar and malaria, and I would request the Hon'ble Minister in charge of Local Self-Government to see that sufficient money is given to the district boards to enable them to combat the diseases. The district boards are not getting sufficient money now as they used to get before. I think it is incumbent on the Hon'ble Minister to see that sufficient funds are placed at the disposal of the district boards so that they might fight against these diseases.

As regards female education, I noticed that separate classes were started for girls in the Rajshahi College, but this year it has been replaced by co-education. I think I can say without fear of contradiction that co-education has been condemned by both the Hindus and Muhammadans alike. What Rajshahi wants is separate classes for the Muhammadan girls. I do not think it will be a costly affair. If you start the classes in the morning and utilise the services of the existing professors, I think it will be a good start. It has now become more costly to send our girls for education either to Calcutta or Dacca. Some sort of separate arrangement should be made for giving higher education to the girls in Rajshahi. Another thing I should like to mention here. There is a talk at present that under the Primary Education Act the *maktabs* will be done away with. I do not think it is time yet to stop *maktab* education. We should continue the *maktab* education for the present, and it would be ten years hence when you can think of doing away with the *maktabs*. There have been in the course of a few years many *madrassas*, not to speak of *maktabs*, but the grants have been very few and insufficient. I hope the Hon'ble Minister in charge will find it possible to increase the grants. The people are not in a position to pay now; they are struggling for their very existence, and so it is all the more necessary for Government to help these institutions.

There is another point. Just now I heard Maulvi Majid Baksh saying that cigarette and tobacco should be taxed. Sir, tobacco is the little thing that the cultivators enjoy, and if you make it dearer, then the poor peasants will have nothing left for enjoyment. I do not know whether he was serious when he said that *pan* should also be taxed. Sir, because of the economic distress many people have given up taking *pan*. This is adding insult to injury. If you tax *pan*, the result will be that people will not take *pan* and you will get no revenue.

Adjournment.

The Council was adjourned to 3 p.m. on Friday, the 2nd March, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Friday, the 2nd March, 1934, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, two Hon'ble Ministers, and 76 nominated and elected members.

STARRED QUESTION

(to which oral answer was given)

Muslim ministerial officers under Public Works Department in Bakarganj Division.

*85. **Maulvi MUHAMMAD HOSSAIN:** Will the Hon'ble Minister in charge of the Public Works Department be pleased to lay on the table a statement showing—

(*i*) the present total number of ministerial officers under the Public Works Department in the Bakarganj Division; and

(*ii*) how many of them are Muhammadans?

MINISTER in charge of PUBLIC WORKS DEPARTMENT (the Hon'ble Nawab K. G. M. Faroqui, Khan Bahadur): (*i*) Twenty-three.

(*ii*) Ten.

UNSTARRED QUESTION

(answer to which was laid on the table)

Holi and Divali festivals.

46. **SETH HUNUMAN PROSAD PODDAR:** (*a*) Is the Hon'ble Member in charge of the Finance Department aware—

(*i*) that amongst the Hindus all over India including Bengal the *Holi* and *Diwali* festivals form parts of essential religious observances of the most sacred nature;

(*ii*) that they yield to no other festival in importance;

(*iii*) that all classes of Hindus take part in these festivals;

(*iv*) that extraordinary difficulties are felt every year as there are no holidays of any type for the purpose; and

(*v*) that private firms and business centres observe holidays and suspend their business on these occasions?

(*b*) Are the Government considering the desirability of—

(*i*) amending the present arrangements to allot holidays on these occasions; and

(*ii*) communicating with public bodies, organs of public opinions and commercial bodies for their opinion on this matter?

MEMBER in charge of FINANCE DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*a*) (*i*), (*ii*) and (*iii*) The *Holi* and *Divali* festivals are known to be held in high esteem and to be widely observed by Hindus in Bengal.

(*iv*) Government have no evidence that this allegation is correct. On the contrary, these festivals are understood to coincide more often than not with the Doljatra festival and with the first day of the Kali Puja, for each of which there is a holiday under the Negotiable Instruments Act.

(*v*) Government have no information.

(*b*) (*i*) and (*ii*) No.

GENERAL DISCUSSION OF THE BUDGET

The general discussion of the budget was resumed.

Maulvi ABDUL KARIM: While the whole world, forced by circumstances, is fast re-learning the long forgotten lessons of administrative economy and every State is trying to cut its coat of national expenses and equipment according to the cloth of available financial resources, it seems to have been reserved for this politically foremost province in India to table a hugely deficit budget. While the tall talks, but whittling down process, of giving India its latest instalment of fiscal autonomy and graduated *Swaraj* is going on in London and Delhi, it seems to be an irony of fate that an improvident budget should have been presented to the Bengal Legislative Council. I wish it had been realised how very difficult this makes the position of those of us in the Council, who yield to none in patriotism and are prepared to work any constitution, really giving a substantial measure of self-government with its genuine financial and administrative equipment. In spite of what

left-winger nationalists may say, I am prepared to allow, in these abnormal times, for a fair margin of increase in the debit side of Bengal's budget owing to the controlling and checking of political unrest and the suppression of dastardly terrorism. But then, Sir, Samuel's oft-repeated assurances that civil disobedience is dead and terrorism well under control for the last year and a half lose all credit in public estimation when at the same time the burden of police expenditure is considerably increasing every year. This year's increase alone accounts for Rs. 52 lakhs and the total since 1931, has risen up to Rs. 173¾ lakhs.

With the best intentions and most generous sentiments it appears a well-nigh impossible task to reassure the public in general, and our constituencies in particular, that the Round Tables and White Papers are going to bring in an era of prosperous, economic, political and social developments for the country. As actual fact, they find its advent heralded by a series of deficit budgets for which the interest alone has accumulated to the appalling total of over Rs. 18 lakhs a year and has necessitated such dubious action as "reproducing or avoiding our provincial debt repayment" by nearly Rs. 7 lakhs. This itself is merely a deferred deficit and an ugly replica of the alleged repudiation of national debts, which is anticipated by reactionaries if Congress people can manage to attain independence or even Dominion status. However dear law and order must be to every organised Government, no system of administration has the right to perpetuate its own existence "at whatever cost" by becoming hysterically prodigal in its defence equipment. This, while its sinews of war are admitted to be as "inelastic" as are Bengal's five main heads of Land, Excise, Stamps, Forests and Registration revenue which provide seven and a half crores out of Bengal's total revenue of nine crores. Nay, these mainstays of Bengal revenue have yielded two and a half crores less than in 1929-30. With equal logic a moderate Indian politician may retort that some drastic retrenchment in police and detective expenditure is more "unescapable" than avoidance of debts and denials of rights of about twenty six and a half lakhs of commutations of pensions. Again, if and when debit items are unescapable, how can a provident Finance Member treat as inevitable such non-emergency items as the five and a half lakhs increased superannuation charges, two and a half lakhs for new central development and *Khas Mahal* roads, 11 lakhs increased charges on overdrafts, six and a half lakhs on increased building and repair allotments, one and a quarter lakhs in replacing a state yacht and on such other non-urgent items, at a crisis when the earthquake damages to Darjeeling Government buildings alone amount to two and a half lakhs.

Another regrettable feature of the budget speech of the Hon'ble Finance Member is that it begins with something like a threat that the

public should have no hope of improvement from all these deficits and financial burdens if additional settlement claim of Bengal is not conceded by the Central Government. It is, however, very gratifying that at long last the Government of India has seen its way to modify the Meston Settlement, which reduced the richest province in India to its present embarrassing financial position. I have reason to feel particular gratification because a decade ago, when I was a Member of the Council of State, I put in a strong plea for the modification of the iniquitous settlement. It is hoped that the amount now available will not be utilised in maintaining the heaviness of the top-heavy administration or in fresh capital outlays in items which cannot be called urgent—official palaces, police mansions, luxury roads, non-remunerative canals. I need hardly say that it is most desirable that the nation-building departments, which have so long been cruelly starved, should have now their legitimate share. It is far from creditable to an efficient administration that a quarter of the revenue should be devoured by police while cottage industries, agricultural improvements, co-operative marketing, productive irrigation and rural reconstruction schemes are starved and Medical and Public Health Departments are prevented from saving the resultant mass of derelict humanity, and the comparative lack of Education grants keep them too illiterate even to realise their own dangers and evil habits, let alone teaching them how to become healthier, wealthier or more self-relying and progressive economically and socially. The quicker Government realises all this the better will it be for all concerned and the easier for us to tackle the problems of constitutional reforms and of turning mass attention and political energies from destructive, communistic and empty demonstrative hysterics to the fruitful channels of constructive rebuilding and reforms.

Then will the people be willing and able to face even "new recurring commitments" to free themselves from present privations and the Government from even unproductive debts and the ugly ruse of "avoidance of debts". Only self-denying change of heart and of head on the part of Government and its different departments and officials can usher in salvation for Bengal.

The revival of budgetary attempts at nation-building which we observe this year in the tiny grants of Rs. 48,000 for land mortgage banks, Rs. 45,000 for non-governmental colleges, Rs. 20,000 for *kala-azar* campaign are, however, commendable indication of dawning change of attitude on behalf of the Government towards the three great problems of Bengal. Similar approbation is due to the Finance Member's practical sympathy with the attempt to raise the price of agricultural and dairy products by spending more in improving transport and repairing disused and constructing new roads. Even more potentially significant is the small beginning at a long last made with one lakh with the unemployment scheme of the Industries Department,

which embraces training for fresh avenues of employment for the scions of the rich, the youths of the *bhadralok* and the sons of the soil. Such revivals of general nation-building would undoubtedly consolidate the position of the Government and of its right-winger nationalist and constructive critics, who wish to help it in these critical times, and would thereby create that atmosphere of good-will which alone can make the pending or any reforms welcome and workable.

Rai Bahadur KESHAB CHANDRA BANERJI: Sir, I do not blame the Hon'ble the Finance Member as it has been a convention with this Council to be presented with a doleful and deficit budget—the deficit increasing from year to year. If we closely scrutinise the budget, as presented, we find some characteristics which have not the sanction of canons of sound public finance. I do not claim that a deficit budget is scientifically unwise. But the deficit, as shown in our budget, is traceable to unremunerative expenditure and therein lies its gloomy aspect. We have been told very pertinently, very emphatically, very seriously, that "law and order must be maintained, no matter what the cost." We deplore the necessity for such heavy expenses under that head: but have we ever been told with the same emphasis, with the same seriousness that the nation-building activities must be pursued, no matter what the cost, either by begging or by borrowing. If the maintenance of law and order is the primary concern of Government, in the expansion of nation-building activities lies their justification. If deficit budget be our lot every year, it is better, it is wiser to be burdened with a deficit budget for productive expenses which are bound to pay in the long run. Deficit, born of unproductive expenses, as is the case with us, paralyses a nation and carries with it strong condemnation of the Government policy.

In the expenditure for the last year, the following characteristics were predominant:—

Firstly, the expenditures on the Reserved subjects which are unremunerative were unconscionably higher than those on the Transferred side which go to make and build a nation;

Secondly, the unremunerative prices received by the cultivators for their produce adversely affected the receipts from the main heads of Revenue; and

Thirdly, the attempt at balancing the budget by rigid economy was extremely feeble.

These features point to the irresponsible nature of the Government and betray their lamentable indifference to the well-being of the people. Every progressive modern Government tries to avoid the characteristics that mark our budget.

Let me now descend to details. The Hon'ble the Finance Member informs us that the promoters of anarchy, by means of civil disobedience and terrorist movements, have involved the Province in an expenditure amounting to Rs. 173¾ lakhs during the last three years. I do not suggest even in a remote way that the terrorist movement should not be suppressed and scorched: my point is that the Government should have handled the situation with greater foresight and statesmanship. Terrorism in Bengal is a psychological process, accelerated by the fancied misdeeds of Government and nurtured by flaming the embers of vendetta in human breasts through false slogans. As such, terrorism is more an educational problem than a political one; and it is more economic than political. Sir, I refrain from dealing with the question at length but in criticising the budget estimates I feel that a Province having a deficit of 2¼ crores should be called upon to spend Rs. 52 lakhs for countering the subversive movements! It is really deplorable. It looks as if the whole nation would wither away under the steam-roller of law and order.

Secondly, the Hon'ble the Finance Member complains that unremunerative prices received by the cultivators for their produce have prevented any recovery in receipts. And it is for the amelioration of the condition of cultivators that I urge the adoption of a planned programme. The vital question is to raise the purchasing power of the cultivators and in order to bring about the desired end, the formula of rural economy, *viz.*, better farming, better living, and better marketing, should be adopted. But up till now, the Government have neglected this important aspect of the question. The economic regeneration of the country is not a subject for patch work: a wall-planned, comprehensive programme must be gone through. Every modern State on the face of the globe has some such programme but our Government are still moving in that mediaeval groove when Kings and Princes ruled over tracts of land, not over people. Of late, we have learnt that there is a Cabinet Economic Committee set up for consideration of relief measures by legislative and administrative methods: a Board of Economic Inquiry has also been constituted for the Province; a rural Development Commissioner has been appointed for exploring the avenues of rural welfare. All these are expressions of the desire to tackle the question: there is no talk of programme yet. The intangible move towards this direction is the publication of the Jute Inquiry Committee's report and the only tangible move is the provision for the establishment of five land mortgage banks for the benefit of cultivators. These are the records, almost invisible, lying to the credit of our Government for fighting trade depression and improving the lot of the cultivators. But the complaint of the Hon'ble the Finance Member is there; I do not know what encourages him to sing in the tune of complaint when the Government themselves are responsible for preventing

recovery in their receipts from heads of Revenue. It pains me to bring this charge against Government but the lot of the people is more painful and the serious attention of the Government must be seriously drawn to it. Our thanks are, however, due to the Hon'ble Minister in charge of the Department of Agriculture and Industries for his keen solicitude for the welfare of the people of Bengal. He has given ample proof of it and he is the only Minister who has made a substantial contribution for the development of Industries in this Province.

Thirdly, the attempt at retrenchment on the recommendations of the Retrenchment Committee has been very feeble. The economies proposed to be effected do not amount to even a quarter of the total savings recommended by the Retrenchment Committee. The financial embarrassments of the Bengal Government required the application of rigid economy, but the main findings of the Swan Committee have been cast to the winds. That is an attitude, born of a sense of irresponsibility. It is admitted that our sources of revenue are inelastic: it is also an important fact that the sources of further taxation are practically nil. On the face of such a situation, there is no other alternative to balance a deficit budget than by the exercise of right economy. But the Hon'ble the Finance Member condemns the Province to a deficit budget and laments over trade depression, inelastic sources of provincial revenue, iniquity of the Meston Settlement and many other things. There is no doubt that Bengal has been smarting under the wrongs of the Meston arrangement since the inception of the reformed Council: there is no doubt that due to world-wide depression, the prices of jute and paddy have gone down abnormally. All these are deterrent forces in regard to the economic prosperity of the Province.

However, it is a matter for congratulation that the Hon'ble the Finance Member of the Government of India has announced in his budget speech that half the jute export duty would be made available to the jute-producing provinces. Bengal has been agitating for the whole of the export duty from sheer justice and equity. One half of the Jute export duty will not, I am afraid, cover even the deficit. Unless there is a genuine attempt at rigid economy and reduction of unproductive expenditure, the economic regeneration of the Province is a far cry. But that problem is to be achieved if we are to live and grow as a nation. I agree with the Hon'ble Mr. Woodhead that unless there is an equitable financial settlement, the chances of the new Constitution functioning smoothly in Bengal are very remote.

I cannot conclude my observations without complimenting the Hon'ble the Finance Member on his candid speech. I am glad that he recognises the failure of Government during the last twelve years to provide adequate funds for working of public utility and for the

development of those constructive services which make for the advancement of a nation educationally, economically and in various other directions. The Province is now on the verge of bankruptcy and the question naturally arises, who is responsible for it? The entire blame is sought to be thrust upon nationalist Bengal. True it is that the subversive political movements are responsible to a considerable extent for the increased expenditure of Government and no Government worth the name can shut their eyes to any movement which seeks to upset law and order and bring about a state of chaos and anarchy in the land. But has the Hon'ble the Finance Member ever taken into account another important factor, I mean the increased cost of administration, which is in no small measure responsible for the present financial deadlock? We all know how with the introduction of the Montagu-Chelmsford reforms the pay-scale and the cadre of all the services were subjected to a thoughtless revision resulting in an all-round enhancement of salaries of the Government officers, particularly those of the Judicial and Executive branches of administration. On the top of that came the Lee Commission which conferred extraordinary privileges on certain classes of officers which they had never enjoyed since the establishment of British rule in India. It is in these branches of administration that real economy can be effected, but unfortunately the recommendations of both the Retrenchment Committees that we had in the course of a decade have not been substantially given effect to.

As I have already said, the budget provides for a sum of Rs. 52 lakhs to deal with subversive movements. Could not Government take non-official public opinion into their confidence, invite persons belonging to the liberal school of political thought in Bengal, in a Square Table Conference, if I may say so, for we find that Round Table Conferences have the effect of delaying the solution of problems? If such an opportunity were given, I am sure, suggestions would not be wanting to evolve a formula, apart from the measures now being taken to deal with the menace of terrorism, to put an end to the evil. Repressive legislation would only have the effect of driving the movement underground. But we want a scheme which will scorch the movement and eradicate it root and branch. It is a matter for regret that no constructive policy has been hitherto followed in this Province. To my mind, the most essential thing to do, is to prevent recruitment. And to this end an attractive programme should be held out before our young men—a programme which they would find profitable to follow. I am prepared to submit a detailed scheme, if asked for. Thus, if Government would only spend a few lakhs of rupees every year out of the 52 lakhs referred to above, to carry out a constructive policy, I feel sure, there would be no more necessity for incurring expenditure on the expansion of jails and in maintaining an additional police force as contemplated in the budget estimates.

Babu KHETTER MOHAN RAY: Mr. President, Sir, while presenting the budget for 1934-35, the Hon'ble Finance Member could not hold out any prospect of improvement in the economic condition of the province: on the other hand he declared the outlook to be one of utmost gravity. In the concluding portion of his speech the Hon'ble Member sounded a note of warning that if there were no hope of our claim to revision of the existing financial arrangements being conceded, a situation would arise which would demand immediate remedial action of the most drastic character, resulting in disastrous consequences to our province. No doubt the situation is one of extreme anxiety to the people of the country. Fortunately the Government of India, at long last, moved half way in the matter and provided in the budget introduced in the Legislative Assembly one-half of the export jute duty to be conceded to the jute-growing provinces. We are very grateful to the Government of India for this tardy and partial recognition of our claim to the jute export duty. Though this concession will go a great way to relieve the present financial tension, one-half of the total jute export duty is scarcely sufficient to put the finance of our Government on a sound basis. Sir, for this we are grateful to His Excellency the Governor for his incessant efforts to press the claim of Bengal to the export jute duty. Sir, we shall be failing in our duty if we do not give expression of our heartfelt gratitude to our late lamented leader, Sir Provash Chunder Mitter, who unremittingly made strenuous efforts to get the iniquitous Meston Award modified so far as Bengal is concerned and pressed for the recognition of the claim of Bengal to the export jute duty, in India and at the Round Table Conferences. Though from the present financial year half of the jute duty will be allotted to Bengal, we cannot but feel that justice has not been fully done to Bengal and that we are still smarting under the wrong which the Meston Award inflicted upon Bengal. We hope and trust that His Excellency the Governor will not relax his efforts in this matter till the other half of the export jute duty is allocated to Bengal.

Sir, for the last four years our country has been passing through acute economic distress unknown in the annals of history. Situation is getting worse every year. In America and Europe and even in Great Britain active attempts are being made by the Governments of those countries to alleviate the suffering of the people and large sums are spent for the purpose. Economic problems were far more complicated in America and Europe than in our country, as those countries are highly industrialised. India, and for that matter, Bengal, is preeminently agricultural and the few industries we have are in their infancy. It is believed that it would have been much easier to achieve success in our own province in any well-organised action to alleviate the economic distress of our province if Government were disposed to take any. Unfortunately so far very little has been done in this country.

Sir, the condition of Bengal is perhaps the worst of all the provinces in India. In Bengal 90 *per cent.* of the people, directly or indirectly, depend upon agriculture. Owing to uneconomic and unremunerative prices at which the agriculturists sell their jute and paddy, their condition is getting worse day by day and they are in a state of gradual decay; and unless something is done to arrest this gradual decay, the consequence will be disastrous. While blaming Government for failure to take prompt and immediate steps to relieve the distress I cannot shut my eyes to the recent beneficent measures which His Excellency the Governor and his Government have taken. Establishment of the permanent Economic Inquiry Board, inauguration of land mortgage banks and appointment of a Development Commissioner and the scheme of the development of small industries are the most important measures recently initiated by Government which are likely to promote the welfare of our country. Whenever Government is pressed by the force of public opinion to do something, Government appoints Committees and creates administrative posts; but all this is sheer waste of money and time if no practical good results from that emerge. In consideration of the present deplorable condition of the country we hope that Government this time means business and will not allow the reports and recommendations of the Economic Board and the Development Commissioner to be shelved.

Sir, whatever attempts may be made, whatever measures may be taken to ameliorate the condition of the country, unless the prices of the agricultural products, especially those of jute and paddy, are considerably raised, there will be no appreciable results. Jute is the most important commercial crop of Bengal. This single commodity fetched about 80 crores of rupees from the foreign countries in 1926-27. As the jute is a monopoly of Bengal, restriction of jute cultivation by means of propaganda and legislation, and regulated markets are sure to raise the prices of jute. The report of the Jute Committee are before the public and the Government. Whatever may be the difference between the majority and the minority reports in other fundamental matters, they agree that the area under jute cultivation should be restricted and they differ in the methods to be adopted to achieve the desired result. I can assure the House that the jute growers themselves desire that some restriction should be put upon jute cultivation and are quite sensible to the beneficial results which will result from restriction. I hope Government will be pleased to take immediate steps for restriction of jute area by intensive propaganda, if not advisable at present by legislation and to appoint a Jute Committee and establish jute markets as recommended by the minority report as soon as possible.

Sir, the Government of Bengal, principally on the initiative of His Excellency the Governor, has undertaken an economic survey to relieve the distress arising from unemployment, fall of commodity

prices, industrial unpreparedness and trade depression. The manufacture of salt should be in the forefront of the purview of this survey as it would give employment to a large number of people if economically feasible. I regret to say that the attitude of the Government of Bengal with respect to indigenous manufacture of salt in Bengal is not encouraging. The attitude of the European merchants is wholly against such venture. They maintain for obvious reasons that the manufacture of salt in Bengal will not be a commercially profitable undertaking. But the question is whether any attempt has been made to make an experiment in this direction. About fifty years ago, salt used to be manufactured on the Bengal and Northern Orissa Coast. This industry declined owing to foreign competition. In the meantime the circumstances of the country have undergone considerable change. Is it not fair and prudent that an investigation should be made to find out whether it is possible to manufacture salt at a profit? Mr. C. H. Pitt, the Government of India's expert, was compelled to admit, "since, however, no salt manufacture has been done on the Bengal and Northern Orissa Coast for some 40 years it appears to be worthwhile investigating the meteorological data which would influence the production of an evaporation source in these areas." He further admitted that "there does not appear to be sufficient evidence immediately to state that the manufacture of any kind would be commercially unprofitable." It is estimated that about 180 lakhs of maunds of imported salt is consumed in Bengal. We can easily imagine how many persons may be provided with employment if this question is earnestly tackled. I know some undertakings were formed to manufacture salt in Bengal. Their attempts will not succeed unless they get adequate support from the Government. The Government of Bengal have received more than Rs. 13 lakhs as their share of the additional import duty on foreign salt on condition that money should be primarily applied to the development of salt industry in the province. May we inquire what Government have done in this direction? So far we know Government have done nothing to encourage and develop salt industry in Bengal. This attitude of the Government is most regrettable. I hope our Government will seriously take up this question, cause an investigation to be made as suggested by Mr. Pitt and give assistance to the companies which have seriously undertaken salt manufacture in Bengal.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, at the outset I must express our deep sense of gratitude to Sir George Schuster and the Government of India for their proposal to surrender part of the jute export duty to Bengal. Even though it will not restore our financial equilibrium it is a definite recognition of the position taken up by Bengal that the last financial settlement has left us with an

impoverished province, and that in spite of our best efforts to retrench expenditure even below the safe limit and in spite of our imposing additional taxations—not in lakhs but in crores. I do not in the least take up the attitude of a disgruntled critic, but I only venture to put up the picture in its true colours when I say that since the reforms, we had literally to hold up our hands in utter despair. I can well visualise the Hon'ble the Finance Member becoming the most unpleasant friend of every member and minister with the advent of the cold season, year after year. As a member of the Public Accounts Committee of this House, I have seen how bitterly the Finance Department had to watch the financial administration of this Province, and had to be more hard than what it really intended to be. Our sense of appreciation must, therefore, go to the Hon'ble Mr. Woodhead for his very great efforts to steer us through in the last two years and bring us much nearer the shore of solvency. We often speak of the Government of India living in Olympian heights. Being himself in the Government of India for some time he probably found out on coming back to Bengal that we were mistaken in thinking only of heights and hills but that there were deep waters and eddies even in the tops of hills which we have to cross—and all credit is due to him for safely piloting us to this present position of ours.

Sir, we shall be failing in our duty to-day if we do not also express our deep sense of gratefulness to His Excellency Sir John Anderson for this partial rehabilitation of Bengal's finance. I am quite sure, Sir, if Sir John was not at the helm of Bengal administration it would at least have taken some time more, before our cries could have softened the authorities at Simla and Whitehall.

But here, Sir, I must make it clear that we have not yet come to a position of financial equilibrium. Our just and legitimate claims regarding the jute tax have not yet been met in full. The load of over-draft loans is also a problem for the future. We have still to explore avenues of resources to give us even a very moderate fund to go on with our development and rural reconstruction proposals. The financial demands under the coming constitution have also to be provided for. But, Sir, these are for the future. Let

> "To-day be not marred by the thoughts of the morrow, even though it may drive us once again to plead for justice. For to-day we have some relief".

Let us only very sweetly refer to our future griefs but more sweetly express our deepest gratitude to all those to whom it is due to-day and also to all those who had in the past worked for this end but, alas, in the unscrutable ways of Providence, are no longer in our midst, but have left us leaving their undying memories.

Let critics both inside and outside the House, Sir, say what they like but can it be denied that after passing through a period of utter negation in politics, the policy of working even the present defective constitution has been justified by the result. This Council under your careful guidance, Sir, passed a series of legislation, bringing about a new atmosphere of getting to work in many spheres. The Bengal Municipal Act, the Waterways Act, the Primary Education Act, the Cess Act, the Bengal Local Self-Government Act, the Bengal State Industries Act—and here I do not mean to say that there are not defects in them—are certainly records of good works done emanating from the Treasury Benches,—while the Wakf Act, the Money-Lenders Act, the Immoral Traffic Act are works which the non-official members of this House can legitimately point out to their credit. On the other hand the inauguration of the Land Mortgage Banks, the appointment of a Development Commissioner, the Unemployment Relief Scheme, the Industrial Development Measures, the proposal of guaranteeing banks to finance industries, the inauguration of rice research station and the proposal of a fruit culture farm, the Board of Economic Enquiry are measures which may justly lead us to hope that the Executive Administration is tackling the economic problems of the masses. And here I must draw once again the attention of all to the other agricultural and rural problems of this province. Let me remind all that even a day's delay is bound to further aggravate the situation and even if there has not been any breakdown who knows that it may not come the very next moment. Let us only remember that in any land system the profits of the entire chain of intermediaries and of the superior landlords is ultimately coming from the margin of the tillers. We have been hearing all round that the landlords are not able to make their collections, that the *mahajans* are not getting even their interest, that the over-dues of the co-operative societies are piling year after year, that the income of everybody has gone down but the cause of all these is the present misfortune of the agriculturist. For him the debt-load is increasing, his interest dues are being deferred while the rents will be soon realised. He has incurred his money liabilities when prices were high and to-day he has to meet the same money charges and even with interest when the rupee has a higher commodity value.

But let me deal with another aspect of the agricultural problem as brought out in the latest census report.

The number of cultivators, both cultivating owners and tenant cultivators, has heavily declined within the said period. The land-owning cultivators, the pride of Bengal, are being slowly turned out of their lands, to swell the ranks of landless labourers and the unemployed. The following are the comparative occupational figures

for 1921 and 1931 to show the heavy decline of the cultivating workers (excluding dependants):—

Ordinary cultivators—

	1921.	1931.
Cultivating owners ...	9,020,472	6,191,067
Tenant cultivators ..	..	13,318
	9,020,472	6,204,385

In any study of these comparative figures one must remember that the population of Bengal excluding States has increased during the last census from 46,695,536 to 50,114,002—an increase of just about 7·3 *per cent*. If the landed cultivating population would have had similar proportionate increase, we should have the number of such landed-cultivating workers to be 9,677,966. In its place, the numbers stand actually at 6,204,385—or less by 3,473,581 or roughly 3½ millions—a decrease of 36 *per cent*. making allowance for the normal increase. According to the census figures each worker has another 2·5 non-working dependants to maintain and on this calculation 3,473,581 earners represent another 8,683,952 non-working dependants (totalling) 12,157,533.

Over 12 million of workers and dependants have thus been turned out of their lands and have ceased to get their livelihood from lands. Even if the factor of proportionate increase be eliminated, the number of land-owning cultivating workers is actually less in 1931 by 2,816,083 in comparison with 1921. Calculated at the same rate of 1 worker to 2·5 non-working dependants, a population of 9,856,290 or roughly 10 millions of people workers and dependants, have been expropriated of their lands in the course of the last ten years.

This displacement of landed agricultural workers—the cultivating owners—must inevitably swell to a certain extent the ranks of agricultural labourers, leading to further depreciation and lowering of wages. The actual increase of agricultural labourers has been just over a million workers or earners—

1931	2,874,804
1921	1,789,988
	1,084,816

embracing a total population of 3,796,856 (workers and non-working dependants). Out of the 10 millions forced to leave their lands nearly

4 millions have thus to fall upon agricultural labour as the only occupation available in the neighbourhood. Nearly 6½ lakhs of workers covering about 2 millions of people have swelled the ranks of other labouring classes as enumerated below—

	1921.	1931.
Labourers, workmen otherwise unspecified ..	284,977	441,921
Other domestic servants	459,612	..
	7,463	
	467,079	866,045
Petty shopkeepers	55,679	157,468
	807,735	1,466,335
	1,466,335	
	807,735	
	658,600 workers	
Increase		658,600 workers

To summarise—

	Workers.
Total replacements from cultivation	3,473,581
Increase in agricultural labourers	1,081,816
Other labouring occupations, servants, shop-keepers ..	658,600
	1,743,416

3½ millions of workers and earners involving 12 millions of people have ceased to be cultivators in one decade. It is interesting to note however, that within this decade there has been an increase in the number of people following the profession of law to the extent of 7,000, 22,000 more in medicine, 41,000 more in the rank of teachers. On the other hand the number of non-cultivating proprietors taking rent in money or kind has increased from 385,170 to 783,755—the number of landlords is exactly double that of the tenants. It is probably the process of sub-infeudation that has increased the number and such is the mad craze of land-investment in this province. It is also possible that climatic influence makes a man seek a life of ease and comfort in this province as soon as he gets a little money whether he is a businessman, industrialist, money-lender, lawyer or doctor.

The time has therefore come when Bengal must have a definite economic programme of rural welfare. The foremost is the need to devise measures for composition and relief of the heavy load of agricultural debts. The Banking Inquiry Committee estimated the average

debt of an agricultural family to be Rs. 160 and that figure was estimated on the basis that the average co-operative debt of such a family was Rs. 85. To-day the average co-operative society debt is nearer Rs. 100 and the average debt will be much nearer Rs. 200.

Here let me give a word of caution to those who administer the revenue laws of this province. The statistic shows that the number of certificate cases has increased from roughly 90,000 in 1925-26 to 185,000 in 1931-32. Certificate cases under section 158-A of the Bengal Tenancy Act has increased from 5,000 to about 26,000 in 1931-32. To-day the figures are even higher up. No record is available to find out how the summary method has been affecting the agriculturists but it is the experience of many that already these certificate cases are bringing movables and chattels, cattle and live-stock into the auction yard and have been sold at ridiculously low prices owing to the depression. Let me give another perspective of the agriculturist's position to-day. From 1929-30, the landlords' transfer fee under the provisions of the New Bengal Tenancy Act amounted to Rs. 42,000,000 on an average per year. This shows that occupancy lands valuing over two crores of rupees are being transferred year after year, and we must find out the nature and cause of this transfer and to whom these transfers are being made, whether there is any displacement of agriculturists by non-agriculturists.

As I have said before, the debt problem must be immediately tackled. The land mortgage bank is certainly some remedy but we have also to take steps for the composition of debts and their redemption. It is also very important to find out whether the revenue and land and the tenancy laws of our province require any modification to stabilise the agriculturists. There is no doubt that the revenue laws have stood the test of the severest depression as is apparent from the fact that our fixed collections have kept to a steady figure of 2·75 crores or thereabout for the years 1930, 1931 and 1932. But the man behind now needs careful watch lest the whole thing may not crash.

Here let me once again emphasise the immediate need of dividing Bengal into zones according to the nature of soil and rainfall to find out the most suitable money crops in each of the areas, to enlist the sympathies of local bodies, and carry on a campaign for developing the money crops in each of these areas.

Bengal has an enormous possibility from the point of view of working of the Agricultural Department. The agricultural marketing of commodities, development of poultry, live-stock, and garden-produce are some of the works that can be taken up in right earnest. I only plead for a little diversity in their works and activities and I appeal to them to remember that if jute is good for Mymensingh or Dacca, sugar is suitable for Rajshahi or Nadia, tobacco is the finest in Rangpur, pulse is best in the Gangetic plain, paddy is abundant in

Barisal or Burdwan, mangoes and leechies are greatest in Malda or Murshidabad. They are not necessarily so in every other district as well and here I must speak a word not certainly of approbation of the Public Works Department. It is not a matter of credit to the department that the Road Development Fund has not yet been fully utilised from 1930-33, we had about 48 lakhs of rupees from the Central Road Development Fund but we could not even spend half. The revised estimate of this year is even better. Bengal essentially needs the comprehensive road programme. Is it too much to expect that a broad trunk road should run from Calcutta to Darjeeling through the Central Bengal and Rajshahi Division and to which will be connected feeder road from the east and the west with fifteen lakhs from the Central Road Fund, ten lakhs from the proceeds of the motor vehicles, 5 lakhs from the contribution of local boards and, say, with an additional 10 lakhs from provincial finance, we can have 40 lakhs per year for development of road projects which will also lead to a very large extent to solve the unemployment problem? One may go to Punjab, to see that the mountain has been bored, hills have vanished and rivers have been re-laid to supply electric energy to 46 towns, yet it is only a poet's dream to think that electrification from the Padma or the Himalayan streams. We have a tremendous energy in the Padma merely passing by.

Let me in conclusion speak a word in favour of reclamation of smaller waterways and drainage channels. A new orientation of policy to save these waterways but I have been grieved to see the budget not keeping a pice to encourage local bodies to take up projects like Navaguuga Cut. Bengal primarily needs the smaller things to be looked after and I trust the Department of Irrigation will soon come forth with what it proposes to do in the matter.

Mr. MUKUNDA BEHARY MULLICK: Personally speaking, I would have been extremely happy if I could have found any opportunity to congratulate the Hon'ble Mr. Woodhead in his arduous task in preparing the budget for the ensuing financial year. But I regret very much that I can neither congratulate the Hon'ble Finance Member nor the Government for the budget as presented to this House. They deserve our thanks however for the great pains they have taken in preparing it and I sympathise with them for the very gloomy and distressing picture of the country they have depicted before us. And perhaps I shall not be wrong if I say at once that this has been the condition because of the advice and the guidance their advisers have given to the Government. The position cannot be doubted that this must be the inevitable result of the top-heavy system of Government where the costs of administration are beyond all possible proportion and which practically devours the whole of its revenues. The budget is hopeless from various points of view. The subjects which require

the greatest consideration have received but the poorest treatment at the hands of the Government. Education, Sanitation, Public Health and Agriculture should have been more liberally dealt with but the accounts we have from the budget have practically disappointed us. And after the passing of the Primary Education Act by this House in August 1930 last, one naturally expected that the Government would give us an indication that the same would be given some real practical shape and the intention of the Government as embodied in the same to give some little education to its illiterate subjects would be translated into action. But we have almost been left in ignorance regarding the same and the position remains as gloomy and hopeless as before. There is perhaps no chance of any change being introduced in the situation, unless as is indicated, some changes take place in other spheres of activities.

Sir, we are told that the condition of the country is gloomy and perhaps the prospects of any change in the economic world are very remote. One naturally expected that some sort of practical suggestion would be made by the Government in this financially stringent condition of the country as to how the same could be changed even to some extent: but it is regrettable to find that the Government had no suggestion to make beyond hinting at the same old theme of some resettlement of financial arrangements with the Government of India with the introduction of further changes in the constitution in the near future.

The Government might very well ask in this connection if the Council had rendered them any assistance which might be of some use to them in mitigating their difficulties with which they are beset.

In reply, Sir, I can say this that suggestions—and very practical suggestions—have been given from time to time by the members of this House asking the Government to mend themselves. But did they pay any heed to them? The answer must be in the negative.

There is at least some hopeful sign to-day for this Province. With the announcement of the Government of India for giving Bengal a share of the jute duty we feel ourselves relieved to some extent. May we only hope that this amount will be devoted to the solution of the economic difficulties of the province?

Sir, I hope it will be admitted on all hands that India is an agricultural country and Bengal is still more so. Census figures would show that between 60-70 *per cent.* of the people are directly engaged in agriculture and a fairly large number again depend upon its products. This has been made very plain to everybody these few years when with the fall in prices of jute and paddy—the main products of this country—it appears that from the biggest landlord to the poorest cultivator, every one has been hard hit. Agriculture is practically

appear that even with the present increased pay of teachers all round, the quality of education as a whole has fallen to a very great degree in Bengal. It is a regrettable fact that with their two universities and with a large number of colleges manned by efficient Professors drawing high salaries, the Bengalee student is now practically nowhere in any all-India competitive examination. And yet members of these classes in this province boast of their intellectual achievement and do not even hesitate to despise the less educated Backward classes.

Sir, I venture to think that the pay of all classes of officers, specially those at the top should be reduced and the revenue should be used more for the benefit of the people from whom it is mostly realised, specially for the reason that the public duties that any of these officials is called upon to discharge and the position that he occupies in public service should be taken as some consideration for rendering loyal services to the State and to the country. I venture to think, Sir, that there is hardly any country in the world excepting India where public services yield such a highly disproportionate remuneration, and specially in higher spheres, and which has made the same absolutely top-heavy.

Secondly, the land laws of the country should undergo a thorough revision. The Government have not left any single stone unturned in finding new sources of revenue possible in this country. They have taxed even the individual man's pocket and perhaps there is hardly any conceivable source for the purpose. But, Sir, consider for a moment the unearned profit of about 15 crores of rupees now being made annually by the aristocratic landlords of the country. They were successful in inducing Lord Cornwallis in 1793 to promulgate the Permanent Settlement Regulation in this province. Promises there were many, but hardly any one of them was fulfilled. It is indeed very strange that there is not a single word in this wonderful piece of Regulation by way of penalty as to what would happen in case of any breach of those promises. The result has been that the Government revenue has suffered to this extent and the real people have also suffered to the same extent in so far as this amount has gone to the pocket of these middle men who are no better than rent collectors. The late Sir P. C. Mitter was good enough to say in reply to a resolution brought forward by Mr. Jitendralal Bannerjee sometime ago and also in reply to the resolution moved by my friend Maulvi Tamiruddin Khan last year that he had every sympathy with the actual cultivator of the soil and none with the profiteering middle man and I hope the Government would find some means to remedy this great injustice done to the agriculturists.

It is indeed regrettable that those that are in touch with the Government should have used their powers in such a way as would cause a misunderstanding in so far as some of their activities tell heavily

upon the agriculturists and at the same time tell upon the public revenue. But it is a fact that in 1793 the native aristocrats made a common cause with the foreign beaurocrats and the result was the promulgation of this wonderful Regulation. The former now think very conveniently that the latter cannot go back upon the solemn declaration they made. But, Sir, reply came from no less an authority than His Excellency Lord Curzon, when in 1902 a memorial was addressed by the late Mr. Romesh Chunder Dutt who collected round him a fair number of the members of the Indian Civil Service to subscribe their signature to the same, for the extension of the Permanent Settlement throughout the whole of India. Lord Curzon pointed out that the *zemindars* had not carried out their promises and the revenue had also suffered considerably in that the *zemindars* in 1902 were making a profit of 12 crores of rupees while they pay only about 3 crores to the Government. This has now gone over 15 crores. They say that there is no power now in the Government to revise these laws. And instead of doing something which will help the public revenue, they have recently amended the Bengal Tenancy Act and the result is conspicuous. It has still more widened the already existing strained feelings between the landlord and the tenant. And the Hon'ble Mr. Marr was frank enough to admit a few years ago that there had been a fall in the revenue by over 18 lakhs of rupees in that year alone on account of the amended Bengal Tenancy Act, though he hoped that this fall was only temporary, but this hope does not seem to have been realised even now.

There is one other point on which I should like to make a little observation. We know that the Reforms were inaugurated in this country in 1921, as a result of which we see the existence of this House being adorned by the representatives of various interests existing in this country. Two things have been made clear under the Reforms—firstly, an expansion of the Legislatures with wider franchise, and secondly, a fair share of the administration being given to the Indians in all higher appointments. It is needless to point out how the members of the scheduled castes or backward classes have fared so far as sending their own true representative to the Council is concerned. It only indicates how handicapped they are and the difficult circumstances in which they have been labouring. This is why it has been necessary for His Excellency the Governor to exercise his special power of nomination in order that the feelings of the masses of people might be voiced in the Legislature.

With regard to the second branch of the Reforms relating to the Indians being put in higher public services, we find that the Ministers, Executive Councillors, are being appointed from amongst the natives of the soil. These high officials again are trying to Indianise the different departments put under them. What is the idea

behind this attempt? Certainly it is to have as much share of the administration as possible in the hands of the natives of the soil. If this be the true position, then is it too much for our educated young men to come forward and ask for some little share of that administration for which they are fit under the rules? You become Judges, Magistrates, Ministers and so on. We have no grievance. But are our educated young men not fit for the several Provincial Services even? They are. But as soon as they qualify themselves under the rules, you put another barrier in their way. When complaints are made, we are given only the sympathy. Was it not brought to the notice of the several rulers of this province beginning with Lord Carmichael and from even before? Did not Lord Ronaldshay say, "In the case of distribution of State patronage, my Government will treat not only sympathetically but also justly and fairly the claims of those of your candidates who are qualified under the rules"? Did not Lord Lytton say "You may rest assured that no qualified candidate of your community will be passed over on the ground of his caste"? But what have we got up till now? In some cases they have said that they must hold first class certificates. May I ask if obtaining first class is a necessary qualification for a munsif or a Deputy Magistrate—though the rules made by the Government do not say so—what ought to be the qualifications for the High Court Judges, Executive Councillors and Ministers?

You know, Sir, the Reforms inaugurated in 1921 are now being examined for a revision. We have heard of loud talks from responsible quarters about the position of the scheduled castes or depressed classes in this country. The Government, while crying that they have a moral obligation to see to the interests of these classes, lost a very great opportunity in not earning the gratitude and confidence of these classes by selecting a proper number of representatives from amongst them when they summoned the several Round Table Conferences in order that they might express their own views. There is already an attempt made from various quarters to minimise the position of the scheduled castes or depressed classes in this province. Some of them have even gone to the length of denying their existence. It ought to be a matter for serious consideration for every true well-wisher of this country to see that the misapprehensions and misunderstandings caused in the past between these classes and other advanced classes of the country be not further widened; on the contrary everybody should sincerely try and see that a common understanding is reached between class and class, before the country can hope to have more powers in the administration. It is indeed regrettable to find that there are certain sections of the people who pretend to think that we do not understand what they mean by their talks of sympathy, efficiency and competition.

Sir, time has come, as I have already observed, when the people of the country must reach a common understanding for the realisation of the common goal in the greater interest of the country itself. It is unfortunate however to recall how instead of doing anything of the kind, the representatives of this country acted at the Round Table Conference. It will not at all be pleasant to discuss in detail the parts played by them in London. But the conclusion was that they could not agree on the fundamental issue on the communal problem and the matter was eventually referred to the arbitration of the Premier. We know the turmoil that was raised after the award was announced in August 1932. Next came the move for its revision by the wonderful fast of Mr. Gandhi. Everybody knows that there was no invitation sent out to anyone but those who felt keenly over the situation then created made it a point to attend the conference at Poona. Far from taking any exception to the proceedings or even to the conclusion then reached, the whole country by various methods signified its unequivocal assent to the same and in settling the matter at any cost. The settlement which was reached was even ratified by the Hindus all over the country including Bengal. It took some time for the Government to come to their final decision on the question and when after due consideration the Home Government announced their acceptance, no objection was raised at all. We find now how various objections of a frivolous nature are being raised over it. May we ask how the country will lose if arrangements are made for a proper representation of a large section of the people who are also natives of this country and whose interests were practically neglected so far? What is the move behind all these attempts? We understand and feel those things very much and we can only express our regret at the courses adopted.

I say therefore that time is high when this sort of attitude and expressions of sympathy should be called back and justice should be meted out to them. I say this more out of agony than out of anger and I give this friendly advice to all concerned before it is too late to rectify. We have up till now only sympathies from the highest to the lowest, but all this even evaporates absolutely when the time for translating the same into practical action comes. There cannot be any responsible Government in any country where the bulk of the people cannot say that they have their proper share in its Legislature and Administration; and where the facts show that 90 *per cent.* of the masses are steeped in ignorance and illiteracy, to talk of responsible Government cannot be characterised as anything else than a mere dream.

Dr. AMULYA RATAN GHOSE: Sir, this is the first time after so many years that I am able to get an opportunity of discussing the

budget estimates; this I must say is certainly a good luck to me. The budget speech of the Hon'ble Finance Member is before us for many days and we have given it our best attention.

Sir, there is an adage that all great men think alike; the great philosopher Charbak said that ঋণং কৃত্বা ঘৃতং পিবেৎ (borrow money and drink ghee, that is clarified butter); so thinks the Hon'ble Mr. Woodhead also; we must maintain law and order at any cost! This is a philosophy which we ordinary mortals cannot understand. The expenses for this matter only were estimated at Rs. 53¼ lakhs in 1933-34 and for 1934-35 a sum of Rs. 52 lakhs and in 1934-35 it is estimated at Rs. 173¾ lakhs. Sir, the responsibility for all this increase in expenditure has been thrown upon the shoulders of the promoters of anarchy. It is really a very controversial question as to who the promoters of anarchy are. The civil disobedience movement has also been cited as one of the main causes of this increase in expenditure. But, Sir, I strongly doubt that this charge is real. Practically the civil disobedience movement is suspended from a long time and even when the movement was going on the police expenditure was unnecessarily increased not so much to save the country from any subversive movement but under that pretext to punish the people at large with this heavy load of expenditure.

Sir, if this movement was necessary to be put down then the method which was also necessary was different. The non-violent movement of civil disobedience could have been checked by a non-violent method and not by *lathi* charges, breaking of heads and limbs, or insulting ladies. Sir, their methods of suppressing the civil disobedience movement and the disappointment of the younger generation gave a strong impetus to the terrorist movement, which is again being sought to be rooted out by an equally mistaken policy, *i.e.*, repression and more repression. Sir, this is a country where the people bow down more to love and affection than to repression. So, Sir, the expenditure is being made unnecessarily heavy, just as for instance, the expenditure of Rs. 3,68,000 for construction of Deoli Jail and the proposed construction of another police-station at Beliaghata at a cost of Rs. 77,000. Sir, it has been stated by the Hon'ble Finance Member that the expenditure is unavoidable but I do not understand why this expenditure is unavoidable. Calcutta has still got buildings at Beliaghata where houses can be had at low rent and if that be so why such a huge sum be spent for the construction of a building and how is it that houses have suddenly become unavailable in Calcutta? Certainly the earthquake did not swallow up the houses of Calcutta.

Sir, the police expenditure could have been much curtailed if only the sergeants were Indianised. The Retrenchment Committee's report have not been carried out. However, the extent to which it has been carried out gives us a saving of Rs. 40½ lakhs. The Excise revenue

has fallen owing to the unchecked illicit distillation of liquor and if this is not stopped with a strong hand the revenue cannot go up. The country is over-taxed as has been admitted by the Hon'ble Mr. Woodhead, but still they will have to pay as there will be duty on matches, sugar and tobacco. Under these circumstances the news of half of the jute export duty does not give us much exhilaration. We will get only half of the duty where our claim is the whole of it. However, wise men say half a loaf is better than no loaf. We can not be dancing with joy that this money will be wholly spent for the department of law and order. Sir, a country where lakhs of people are dying of malaria and the Government have not yet been successful to cope with it, the question of a hill sanatorium for the treatment of tuberculosis patients have not yet been done and the various epidemic diseases are taking away thousands of valuable lives, the people are starving for unemployment, there is grim discontentment at the proposals of the White Paper and the political horizon is dark. People are suffering from acute economic distress. Under these ominous conditions comes the news of the fabulous figure of Rs. 173 lakhs to be spent for law and order. Sir, instead of spending this huge sum for law and order in order to maintain it, I say, Sir, that spend this sum for the contentment of the people, give them food, give them medical relief, give them employment, give them their cherished right of liberty and freedom, you will see that law and order is maintained automatically. Regarding employment, of course, something tangible is being done by the Department of Industries, but even they are grumbling for want of more money. Sir, the work they are doing, is certainly valuable and they deserve encouragement by the Finance Member. I think, Sir, that even if a portion of the money which is going to be devoted under the head "Law and Order" had been given to this department the problem of unemployment more or less could have been solved. Sir, as it has been already stated that our finances cannot go up by more taxes, then of course retrenchment is the only way by which we can save more money. When more money is saved and if the Government decides to spend that money for law and order only then of course the nation itself cannot grow. Sir, I have already stated that the needs in the Transferred departments are well known and in this year's budget too those departments remain equally starved as they were ever before. The question of primary education is still in the same state as it has been last year or year before. Sir, the people of the country are not satisfied with the daily amenities of life and if Government only tries to get sympathy of the people by repression then I do not think that they will be successful. Therefore, Sir, I implore the Government that more money should be spent for the nation-building departments and more money should be saved from the other heads where saving is possible. Sir, I hope in discussing the budget estimates more consideration will be given to

these proposals by the Hon'ble Finance Member and I hope that if this sort of thing is actually pursued the conditions of the country will greatly improve.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I join the acclamation with which Bengal received the announcement of allocation of half the jute export duty to the jute producing provinces. Sir George Schuster deserves the gratitude of Bengal for the recognition of her claim. His Excellency the Governor of Bengal and his Finance Member also deserve congratulations for the achievement after a long and unbending fight for the cause. The announcement has been made more graceful by the addition that it was not the full and final settlement of Bengal's financial position. The allotment has no doubt been made contingent on the strengthening of the Central Government's financial position by imposition of an excise duty on matches. But I believe that we shall have no occasion to lose the allotted sum. But, Sir, all our rejoicings melt away when the deficit budget stares at our face, when we are reminded how the real objective of the additional duty on salt allotted to our share has been neglected, when we visualize the enormous increase in expenditure under General Administration entailing White Paper Constitution, when we find that the police budget had been going on increasing for the alleged object of protection of those, thousands of whom are falling victims to preventible diseases every year for want of medicine, treatment and diet, when we find how a substantial portion of the collection under the Motor Vehicles Tax Act is being withheld, and when we think over the step-motherly treatment the Transferred departments are getting at the hand of the Government. Do not all these facts make one apprehend that the money which has come to Bengal as a windfall might be utilised for balancing the budget or for restoring the full pay of the officers who are getting much more than what the people whom they allege to serve has capacity to pay? The fact remains that the Government cannot expect to bridge over the enormous gap between expenditure and revenue and contribute liberally for the economic development of the province even if it gets whole of the jute duty and a portion of the income-tax which we have been claiming from the Central Government unless and until the Government reduces its cost of administration by revising the scale of pay of its officers, by abolition of some highly-paid posts, by stopping recruitments for some years at least in India Services and by gradual but rapid Indianisation of all services.

Sir, the revenue has been falling for some years past to an appreciable extent, and there is no indication of any improvement in near future. What has the Government done or intends to do to make up the deficiency in the budget? Has it retrenched the cost of administration to such an extent as is desired by the people? No, because

the standard of efficiency will suffer. Has it taken any bold step to raise the prices of the agricultural produce, to remove the indebtedness of the agriculturists, to introduce scientific method of agriculture, to develop cottage industries of the province by granting some bounties and procuring favourable markets, etc., in a word, to improve the earning capacity of the people. Sir, the answer is in the negative and why, because the world wide trade depression and want of funds necessary for the purpose.

(The Council was adjourned for fifteen minutes for prayer.)

(After adjournment.)

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I was speaking whether the Government has been taking any step to improve revenue. Surely, it has been taking the easiest course, taxation is open to it but not the direct course because it may be resented, hence the indirect course must be adopted. The Court-fee Act must be amended with the alleged object of removing anomalies and prevention of fraud but resulting in increasing burden of the litigant public who are already overburdened. Registration fees, and cost of getting copies of documents will have to be increased; an additional sum equal to ten per cent. of the landlord's fee will have to be paid for its transmission though the Government has not to spend more than half the amount realised; a Waterways Board will have to be formed and maintained for the navigable channels and people using those channels will have to bear practically the whole of the cost. But will Government be successful in its attempts? I believe not, the Government has started from the wrong end. To add to the misfortune, Sir, a blow in the shape of an excise duty on factory produced sugar and on matches is pending over the head of those industries which have not yet passed the nascent stage in Bengal. Will not the peasantry of Bengal be hard hit by the imposition of these duties? Will the Government of Bengal raise a voice of protest in the matter? I would then draw your attention to the provision for a huge sum of Rs. 52 lakhs in the budget for coping with the civil disobedience and terrorist movements. Government has already spent a little more than 1¼ crores in its own way for the purpose. Government has no doubt been successful in checking the outward manifestations of the movements, but have the people been won over to the side of the Government? Have not the movements started from the economic struggle—the struggle for existence—and from a sense of despondency about the future among the youths of the province? Will the Government now pause and think over the course of its future action so that the evils be not kept checked but are uprooted?

Maulvi Tamizuddin Khan regretted the other day for the apathy of the Government in establishing a Muhammadan girls' school in Calcutta. May I remind him that we have already got an enormous number of communal educational institutions in the *mufassal* which absorb about three-fourths of the amounts allotted by district boards for primary education? Is it desirable that boys and girls from their very infancy should be taught in the environments of communalism? I regret with Maulvi Tamizuddin Khan that the Hon'ble Minister for Education should not move to make arrangements for teaching Arabic and Persian in girls' schools which have got a sufficient number of Moslem girls.

Mr. R. MAITI: Mr. President, Sir, we always thought that the annual discussion of the budget would be really profitable both to the Government as well as to the members of this House, but from our experience of a past few years we are thoroughly convinced that such discussion has no practical utility. Sir, it is merely a cry in the wilderness. Year after year many valuable suggestions are being made on the floor of this House by the members for curtailing expenses with a view to balance the budget but none has so far been found to be acceptable to the Government in framing its budget for the next year. The result has been that there is a deficit budget every year with no hope or prospect of its being balanced in near future.

Sir, in his budget speech last year the Hon'ble the Finance Member said that the receipts from the main heads of provincial revenue will not and cannot return to figures which before 1930 were looked upon as normal, until the purchasing power of the people has improved, and improved considerably, through an increase in prices of the staple agricultural products of the province. He repeats the same old story this year too while introducing the budget for 1934-35 the other day in this House with a deficit of approximately Rs. 2¼ crores. He has explored all the regions but has failed to find any real improvement in any direction. The receipts on revenue account are gradually dwindling while expenditure instead of decreasing is actually on the increase. No picture could have been more gloomy and dismal than this. The Hon'ble the Finance Member is quite at a loss to find any solution for such deplorable state of things except that he hopes that the only remedy lies in an equitable financial settlement.

Sir, it is most gratifying to note that the efforts of the Government in this direction have been practically crowned with success. Half the net proceeds of the export duty on jute amounting to Rs. 167 lakhs has been allocated to Bengal though provisionally. But that being merely a drop in the ocean cannot at all go to improve the financial position of Bengal unless and until the whole of the jute export duty is restored to her unconditionally and made a provincial source of revenue.

Sir, we are really very grateful to the Government for the fight they had put up all these years for our just cause and we hope they will not relax their efforts in future till the desired end is achieved. But, Sir, so long our just claim is not equitably settled, the Government ought to make other efforts for the improvement of such a serious situation. Their duties do not end here by merely ascribing the causes which have brought about such a lamentable state of things in the financial position of Bengal, to (1) the worldwide depression in trade and commerce, and (2) the political situation in Bengal. Admittedly these causes are largely responsible for the present financial position of the province, but that is no reason why the Government should take no steps for its improvement by other means available to them.

Sir, as regards the prevailing economic depression there is hardly any prospect for its solution in the near future but as for the other cause, *viz.*, the political situation in Bengal for which lakhs and lakhs of rupees are being spent every year, the remedy lies in the hands of the Government if they only cared to apply the same. Sir, what is the present political situation in Bengal due to? It is merely a question of bread which has led the people to despair and helplessness. Originally the people raised objection to the irresponsible system of administration prevailing in the country and demanded radical changes in the constitution. But popular demands were unheeded and public opinion flouted. As a consequence of it, political unrest in the shape of civil disobedience movement and terrorism began to make its appearance. Though we have no sympathy for either of these methods, we agree with the root causes from which it proceeded. But the Government, instead of handling the situation in a tactful manner, has launched repressive measures in the country at enormous cost of Rs. 173¾ lakhs for 1932-33 to 1934-35. This appalling drain has contributed a good deal to the deficit budget of the province. The Government has been spending so much money every year on this account but they have not been able to eradicate this evil from the land. So it can be safely taken that this is no remedy at all. They must look for the remedy elsewhere. Even to-day the Government do not consider it necessary to create a calm atmosphere in the country, though they are now prepared to offer some more constitutional reforms to the people. They forget altogether that a policy of repression and conciliation cannot go hand in hand. This will simply make the people exasperated and cannot bring them round to work out the new constitution, whatever may be its worth: wise statesmanship requires that there should be some gesture on the part of the Government for the creation of a calmer atmosphere in the country. So long you do not do that, you cannot expect your budget to be balanced and your expenditure will go on increasing year after year and deficit will make a permanent residence in the country.

Sir, depression or no depression, political unrest or no political unrest—the budget ought to be balanced, else it is no budget at all. The year's expenditure must be kept within the year's revenue. If you have no money, you cannot afford to spend beyond your means. It is most unwise and injudicious to meet the deficit by overdraft every year. It might be a very pleasant task for the Hon'ble Mr. Woodhead to find money by overdraft for the deficit without the least trouble on his part, but it is heartrending for the people to bear such a heavy load on their shoulders from year to year. People have already been saddled with many more previous heavy burdens and the fresh proposal for another overdraft of such a heavy sum only adds to their distress and misery. The sooner this policy of meeting deficits by borrowing is abandoned it is better for all parties concerned.

Sir, if according to the Hon'ble the Finance Member there are not as yet any indications that the year 1934-35 will be marked by a considerable improvement in the price level of these two primary products, *viz.*, rice and jute, the only course left open to the Government is to take recourse to the drastic retrenchment. Has the Government shown any keen desire in this respect? Absolutely none. They have only adopted half-hearted measures of retrenchment. The Retrenchment Committee of 1932 has recommended an ultimate saving of Rs. 1,84,96,000 but it is most surprising to find that the Government contemplate adopting the recommendations of the Retrenchment Committee to the extent of a few lakhs only. Of course there might be some difficulties for the present to give full effect to all the recommendations, but there is nothing to prevent the Government making a full declaration immediately as to which of the recommendations they are going to accept and which they are not. Though a memorandum has been recently circulated giving particulars of a very few recommendations which have been accepted by the Government, it does not give sure indication, as to whether the Government is prepared to accept the most important recommendations of the Retrenchment Committee regarding which the public opinion is unanimous. On the other hand, they have told us definitely that they are unable to accept some of the recommendations of the Retrenchment Committee on some plea or other. The Retrenchment Committee after making a laborious and elaborate inquiry into the matter has made all these recommendations. If their recommendations are not accepted *in toto* I beg to submit the public money spent for the Committee was merely a waste. Still there is time to retrieve the position of the Government and I hope the Government will find themselves in a position to accept the recommendations of the Committee in full.

Now, Sir, coming to the budget itself one is astonished to find most unjust and inequitable distribution of revenue on proper heads of expenditure. The total revenue receipts according to the estimates

for 1934-35 are Rs. 9,07,47,000 out of which the expenditure under the head "Police" alone amounts to Rs. 2,24,65,000 though I have not taken into account the other heads of expenditure in connection with the maintenance of law and order, whereas a provision of Rs. 2,51,42,000 only—a sum almost equal to that is allotted for the Police—has been made for the nation-building departments, viz., Education (Reserved and Transferred), Medical, Public Health, Agriculture and Industries Departments, on which depend the health and well-being of more than 50 millions of people of Bengal. There is absolutely no justification for such unequal distribution. By starving the nation-building departments your maintenance of law and order counts for nothing. First save the people and then apply law and order if they are to be maintained at all. To start at the wrong end is only possible under a bureaucratic form of Government. That is why there has been a long cry in the country for drastic changes in the entire system of administration and I believe it will continue for ever, if nothing comes up to the expectation of the people.

Maulvi Abdul Hamid Shah addressed the House in Bengali. The following is a translation of his speech as supplied by him:—

Mr. President, Sir, the plain unvarnished tale of the economic condition of the country as given by the Hon'ble Finance Member, Mr. J. A. Woodhead, in presenting the budget for 1934-35, has left very little for our comment. After a desperate effort to make the income and expenditure equalise, he has been compelled sorrowfully to admit, "Judged by the figures of the budget estimates, the financial position is worse instead of better, and if there were no hope of our claim to a revision of the existing financial settlement being conceded, the outlook would be one of the utmost gravity." For, in the present situation, it is impossible to impose a new tax in Bengal and there is little possibility of compensating the deficit to any desirable extent by the reduction of expenditure. The Bengal Government could not reduce expenditure by more than Rs. 40½ lakhs in spite of a Retrenchment Committee's recommendation. It is patent that the reduction of Rs. 40½ lakhs is no relief to a deficit of 2¼ crores of rupees. For the year 1934-35, the income has been estimated at 9 crores 7 lakhs and 47 thousand and the expenditure at 11 crores 29 lakhs and 17 thousand. That is to say the deficit is about 25 per cent. There cannot be worse financial position than this and in these hard days it is little to be hoped that new sources of income would be discovered. The ultimate source is the peasant; the last drop of his blood is about to be shed and it is a wonder of wonders that he is still alive. The Government should abandon this policy of blood-sucking and should look for means to inject life in the dead-bones of the Bengal peasant. The Government cannot afford to

postpone this search for means, because the peasant is in his last gasps.

Sir, the Government has faced deficit since 1930-31. Since 1932-33 the enormous proportions of this deficit have engaged the public attention. If we add together the deficits for 1932-33, 1933-34 and 1934-35 which stand respectively at 86 lakhs 21 thousand and 1 crore 97 lakhs 93 thousand and 2 crores 21 lakhs 70 thousand, we get at the huge sum of 5 crores 5 lakhs, and 84 thousand. The income for 1934-35 has been shown at 9 crores, 7 lakhs and 47 thousand only. So it comes to this that the deficits amount to more than half the total income for the financial year. It is not to be hoped that any way out of this impasse would be easily discovered. The Government of India has saved the Bengal Government from immediate collapse by granting 1 crore 67 lakhs from out of jute export duty and gratitude is due to them on that account. We did not hope to get this jute-duty before the reforms. Now the question is whether we can be kept in life by this proposed grant for 1934-35, or, if death is inevitable, whether we can justifiably approach them for further grants.

Sir, it can safely be asserted that the Bengal Government cannot possibly escape difficulties by virtue of the proposed India Government grant. The Bengal Government will have to spend on "Law and Order" alone 8 crores 77 lakhs and 67 thousand out of its total income of 9 crores and odd. The estimated expenditure in Education, Public Health, Agriculture, Industries, etc., is 2 crores 51 lakhs 50 thousand. If the Government were to avoid closing down the Transferred departments, then the Government will have to find Rs. 54 lakhs and odd over and above the Government of India's grant. And one must be very bold if he can prophesy that the Finance Member's hopes of receiving increase of incomes of Rs. 8½ lakhs and Rs. 6 lakhs respectively from Excise and Stamp duties will not prove to be castles in the air. I do not find the least clue to the reasonableness of Finance Member's hopes of enhanced revenues of Rs. 14½ lakhs from Excise and Stamps in the worsening economic position of Bengal and especially in the falling prices of the two staple crops of the province, *viz.*, jute and paddy. Probably he is building hopes of enhanced revenues from court-fees on the delay in the enforcement of the Bengal Money-lenders' Act. But the economic conditions of the money-lenders in the *mufassal* do not encourage the hope that they will facilitate very much the sale of stamps by anticipating the operation of the Money-lenders' Act. Moreover, interests are accruing on the deficits for 1932-33 and 1933-34, to the amount of 2 crores 84 lakhs. What about those interests and principals? The only way out seems to be the total repeal of the Meston Award or at least some arrangement to get the whole of Bengal's dues on the jute

[illegible]y. We have persistently said that Bengal has legitimate claims to the whole of the jute export duty. We trust that the Hon'ble Finance Member will not slacken his efforts to get the whole of our dues.

Sir, I am not prepared to support his policy, if the Finance Member fixes his attention on the export jute duty only. Because we shall have to remedy the Meston Award on the one side, on the other side we shall have to set our hands to the building up of the future prosperity of the province. I consider the present economic crisis as the suitable time for engaging in the rebuilding of the country; because it is this crisis that has placed all classes including the Government on the same plane. In simpler language the present distress has levelled us all, the landlord and the tenant, the lawyer and the client, the lender and the borrower, the buyer and the seller, the physician and the patient, all are now willing to sympathise and co-operate. In the same way the falling revenues and the civil disobedience and terrorist movements have forced the Government to consult the peace and prosperity of our countrymen and to seek our co-operation. This desire for co-operation has originated in this economic crisis. Men cannot think one way and tread the same path until they are reduced to the same conditions. This economic crisis is being dubbed "bad times" but I almost foresee the cursed Bengalee will see his way out through this crisis. All classes have evinced a strong desire for union and old class-jealousies seem to disappear. I believe this crisis will help to eradicate the evil of communalism. If at this auspicious moment Government set themselves to building work with honest intentions, it can boldly be asserted that better days will return to Bengal in three years. It is a happy gesture that the Bengal Government should have appointed an Economic Inquiry Committee and a Development Commissioner—Mr. Townend. But its success will depend on the methods adopted. The Committee and the Commissioner must not confine themselves to the Writers' Buildings or to the district headquarters; they must visit every subdivision. In every subdivision they ought to hold conferences to meet landlords and tenants, lender and borrower, buyers and sellers and publicly and threadbare discuss our economic problems. The District Magistrates and the Subdivisional Officers should organise receptions to these conferences. Special invitations should be issued to the real representatives of the tenantry. I also consider it desirable that even those who have been served with notices under section 144, Indian Penal Code, should be invited to attend such meetings and to express freely their views. I believe that only then will the Government be enabled to get at the common and basic interests in the multiplicity of conflicting sectional interests, which when weighed in the scales of justice, will prove acceptable to all classes and which will enable all classes to steer through the reforms and

reach their goal. If the Government adopt such methods and indicate to the agriculturists methods of their improvement, *e.g.*, methods of profitable agriculture or seek to revive the dying cottage industries and at times they encourage such education by monetary aids the people will realise that the Government do intend the good of the people. And according as such a feeling will gain ground in men's minds and according as the educated unemployed youth will seek employment in the various openings, the terrorist movement will die a natural death. That the Government has failed to root out the evil of terrorism after spending lakhs is due to the fact that the impression is being produced on the simple-minded villagers at large that the Government are not really their well-wishers and due to the fact that what the revolutionaries are doing are doing for the good of the people. The revolutionaries have succeeded in treading the path steadily because of this false impression. When the Government will succeed in convincing the public that they are the real well-wishers of the people and do so by propaganda of words and by the more convincing argument of deeds and will demonstrate that the revolutionaries are doing things harmful, I am sure the revolutionaries will find their job nipped and the people themselves will set to destroy the revolutionaries. I, therefore, request the Government to set apart half the Rs. 52 lakhs they have estimated to be the expenditure on the control of terrorism for propaganda work and I believe, in less than a year's time, this dangerous movement will be on the way to its grave. As I desire to present my detailed views to the Economic Inquiry Committee, I close the 15 minutes speech.

Maulvi ABUL QUASEM: Sir, almost every member of this Council who has already spoken began by congratulating the Government of India on the allocation of half the jute export duty to this province. Sir, really speaking I do not find anything upon which to congratulate the Government of India. To me this allocation of half the jute export duty to Bengal appears but as an over-delayed recognition of a flagrant piece of injustice done to Bengal for a long series of years. The Government of India should have been generous enough to allocate the whole of the jute export duty to Bengal; instead of that they have only allocated half of it. I, Sir, cannot with sincerity join with the other members in congratulating the Government of India. Our rejoicing, however, over this windfall would have been real if we could be assured that the money which we were unexpectedly getting from the Government of India would be utilised in developing the nation-building departments. Sir, we do not know to what purpose this money would be applied. We have been told by other speakers that Government are already spending overmuch on police administration and in fighting terrorism. There is a feeling in the minds of many members

that possibly extravagance is being indulged in in fighting terrorism and in the expenditure on the police. We feel and strongly feel that there is room for economy in the cost of the Police Department and in the cost of fighting terrorism. There was a time when we used to be told that there was no room for economy in the army expenditure in India, but as a result of strenuous efforts for several years a huge economy has been effected in the army expenditure in India. I believe if real and earnest efforts were made, economy could also be effected in the cost of police administration and in the cost of fighting terrorism. To be sure, law and order has to be preserved; no one can deny that. But law and order should not be sought to be preserved at the cost of the health and well-being of the people. I should like to judge the budget which has been presented by one test. Does it hold out any relief to the tillers of the soil? The answer is an emphatic "no." The cultivator is groaning under a weight which is too heavy for him to bear and there does not seem to be any hope of relief. It appears to me that what the Government of India has given us with their right hand in the shape of half the jute export duty they are taking away with their left hand. They have imposed fresh duty on sugar, tobacco and matches. All these commodities are universally used in Bengal. The money that would be realised from these commodities would probably more than make up what they have given us of the jute export duty. The burden on the cultivator and the tax-payer therefore increases. Therefore, Sir, I do not find anything to rejoice over. The cultivator in Bengal is really in a sad plight. We have been promised an Economic Board of Inquiry and a Development Commissioner has been appointed. We do not know what money would be forthcoming to implement any recommendation that the Development Commissioner or the Economic Board might make. There is little hope in that direction. Simply to soothe the feelings of certain persons the Economic Board of Inquiry is going to be established and a Development Commissioner has been appointed. Money would be needed to give effect to the recommendations that would emanate from this Board and the Development Commissioner. The present Government has been described by those who are commonly known as political agitators as heartless and soulless, but many of those who are not political agitators and have not taken up politics as their profession also think that there is some amount of justification in the present administration being thought as heartless and soulless. The people of Bengal, it is admitted, are really suffering. Their miseries are indeed great. But the question whether genuine efforts are being made to relieve their miseries and alleviate their sufferings cannot but be answered in the negative. I will give one instance. In the present abnormal distress which has overtaken not only Bengal but the whole world the income of every class of people has been diminished by about half or two-thirds. Government were forced to make a cut of 10 *per cent.* in the salaries of all public servants,

but later on Government thought fit for reasons best known to themselves to restore 5 *per cent.* of the cut. The officers of Government were not in any way inconvenienced by the cut as the prices of necessaries of life have remained incredibly low. So what reason was there for the restoration of this 5 *per cent.* cut? The money that would have been available by retaining this 5 *per cent.* cut could very well have been utilised in many beneficent directions, such as sanitation, medical relief, development of agriculture and industries and the spreading of primary education. If the present distress has affected every section of the people, why should not the officers of Government be also ready to forego a small fraction of their salary for the alleviation of the sufferings of the people for whose good they are supposed to exist? But the distress of the people really evokes little practical sympathy from the Government, and Government goes on as a machine. It is no wonder that this lack of a really sympathetic attitude and of adequate beneficent measures for the relief of the sufferings of the people tends to produce not affection but disaffection in the minds of the people. I know, Sir, at the present moment the income of the district boards has been much affected, because cess cannot be realised to the extent desired. Certain sections of the people who used to help themselves before are now forced to have resort to charitable dispensaries. The dispensaries with their limited resources are unable to cope with the demand made upon them. More money should be placed at the disposal of the district boards for charitable medical relief. I speak with knowledge of the conditions prevailing in my constituency. In my subdivision in two thanas, namely, Satkhira and Kalaroa, during the last decade there has been an actual decrease of population. It appears from the last Census report that there has been a decrease of population in the two thanas owing to the ravages of *kala-azar*, malaria and other diseases and that was principally due to the fact that the river Betna was now choked up with water-hyacinth, and the river Nowkhali was in a moribund condition. No relief is being contemplated for those places. Talking of my own subdivision again, Sir, I may refer to two *bils*. One is the Dathbhanga *bil*, part of which lies also in the Basirhat subdivision. For want of proper drainage in that *bil* hundreds of people who hold land there cannot produce any crop. The other *bil* is the Bakchara *bil*. For want of an agricultural embankment hundreds of agriculturists cannot make any profitable use of their lands, because every year there is influx of salt water into the *bil*. The Government do not care for the real needs of the people. "Law and Order" is the order of the day. We all agree that law and order must be maintained; money should be found for the purpose, but money should also be found for the relief of the people so that they may live. Sir, once a foreigner after a visit to India is reported to have remarked that the people of India do not live, they only exist. How long will the people of this country go on maintaining a bare existence? When will they

really begin to live a life befitting citizens of a progressive modern state? I submit, Sir, it is time that their miseries were attended to.

Sir, as regards Administration of Justice, I would like to speak a few words. This department is already yielding more money than is needed to run the department. The Government is making a profit out of it, which no Government should ever think of doing. Government is examining every loophole for getting extra revenue from this Administration of Justice. Sir, many people in these hard days are being denied justice. They cannot go to courts for the prohibitive cost which is involved in getting justice from the law courts. May I, while on this topic, bring to the notice of the Hon'ble the Judicial Member one fact and that is this: There is a practice of appointing members of the Civil Service as Additional District Judges. It is often found that these officers who are appointed Additional District Judges have little knowledge of the civil law and I say that administration of civil justice in their hands is sometimes murdered. These members of the Civil Service have to elect either for the Judicial or the Executive Branch but it is often found that officers who are really meant for the executive service are brought to the judicial side, although they have no experience of administration of civil justice. It is a crying grievance that real justice cannot be had from these members of the Indian Civil Service who with hardly any knowledge of the civil laws or the land laws of Bengal are appointed to administer those laws. I think this matter should be taken into consideration by the Hon'ble Judicial Member and an improvement on the present unsatisfactory practice should be brought about.

There are certain facts in connection with the Local Self-Government Department which I want to bring to the notice of the Government. The other day Mr. Thompson remarked about the dilatoriness of this department. I would add two more instances of dilatoriness of this department. In March, 1933, elections were held in many municipalities under the new Act. It is now 1934 but up till now many newly elected municipalities have not been in working order as Government has not made the nominations. Another instance which I would like to cite is that the Bengal Local Self-Government Act was passed in 1932, but up till now the rules under that Act have not been framed so that many of the provisions of the Act cannot be given effect to. I do not know how long the Local Self-Government Department would be sitting over these urgent matters.

We are thankful to the Hon'ble Minister in charge of Industries for having really broken new ground in several directions. But, Sir, the activities of the Industries Department have not been felt in my dis-

trict. An Advisory Board for Industries has not yet been set up in my district. I do not know when the Hon'ble Minister will be pleased——

(At this stage it was found that there was no quorum in the House.)

Adjournment.

The Council was adjourned till 3 p.m., on Monday, the 5th March, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Monday, the 5th March, 1934, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 108 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Live-stock of Bengal.

*96. **Babu SATYA KINKAR SAHANA:** (*a*) Is the Hon'ble Minister in charge of the Agriculture and Industries Department aware—

(*i*) that the live-stock of Bengal—cows, buffaloes, goats, sheep, even fowls and ducks—have deteriorated during the last century and a half;

(*ii*) that the present yield of milk per animal has come down to a very low level;

(*iii*) that the yield of meat per goat or sheep is poor both in quality and quantity; and

(*iv*) that the eggs received from barn-door fowls and ducks are smaller in size and poorer in quality?

(*b*) If the answers to (*a*) are in the affirmative, will the Hon'ble Minister be pleased to state what steps the Government have been taking or are contemplating to take for the improvement of the live-stock of the province by importing better stock from other places?

MINISTER in charge of AGRICULTURE and INDUSTRIES DEPARTMENT (the Hon'ble Nawab K. G. M. Faroqui, Khan Bahadur): (*a*) (*i*) to (*iv*) No official information is available about the position of live-stock in Bengal as it was 150 years ago; but it is generally admitted that owing to climatic and other conditions prevailing in this province there has been a general deterioration of live-stock, etc., of the province and consequently the yield of milk, etc., has been poor both in quantity and quality.

(*b*) It is the policy of Government to improve the breed of cattle by the introduction of pedigree bulls for breeding purposes. To this end herds of pure Sindhis and Hariana as well as Hariana crosses, are being maintained. A herd of Murrah buffaloes has also been built up with the object of improving the buffalo stock of the province. Stud-bulls are distributed and also maintained at the Government farms for breeding purposes and district boards and individuals have been supplied with bulls on a loan basis.

A scheme for the improvement of cattle by the grant of premiums to owners of good bulls has been introduced with satisfactory results.

At the Poultry Section in the Dacca Farm a breed suitable to the conditions of the province is being evolved.

Maulvi SYED MAJID BAKSH: Is the Hon'ble Minister aware that all over the continent of Europe a law is in force that cattle producing a lesser quantity of milk than what is prescribed has got to be sent to the slaughter house?

The Hon'ble Nawab K. G. M. FAROQUI, Khan Bahadur: I am not aware of such a law.

Babu HEM CHANDRA ROY CHOUDHURI: Does the Hon'ble Minister intend to instruct union boards to maintain stud bulls?

The Hon'ble Nawab K. G. M. FAROQUI, Khan Bahadur: We cannot instruct union boards. Bulls are supplied to district boards on indents.

Maulvi SYED MAJID BAKSH: What measures does the Hon'ble Minister contemplate to take in order to keep the yield of milk to a particular quantity?

The Hon'ble Nawab K. G. M. FAROQUI, Khan Bahadur: I would refer the hon'ble member to the Annual Reports of the Department of Agriculture. There he will get the information.

Maulvi SYED MAJID BAKSH: What measures does the Hon'ble Minister intend to take to prevent diseases of poultry which has lately devastated the stock on a large scale?

The Hon'ble Nawab K. G. M. FAROQUI, Khan Bahadur: I want notice.

Maulvi SYED MAJID BAKSH: Is there any arrangement in the Dacca Farm for teaching how to cure poultry diseases?

The Hon'ble Nawab K. G. M. FAROQUI, Khan Bahadur: I want notice.

Maulvi SYED MAJID BAKSH: What measures has the Hon'ble Minister taken up to disseminate news about the protection of poultry?

The Hon'ble Nawab K. G. M. FAROQUI, Khan Bahadur: I have already referred the hon'ble member to the Annual Report. He will find there all information.

Maulvi SYED MAJID BAKSH: Has the Hon'ble Minister taken any steps to disseminate news in vernacular among the poultry breeders?

The Hon'ble Nawab K. G. M. FAROQUI, Khan Bahadur: No action has yet been taken in this direction.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Is it not a fact that poultry diseases in epidemic form caused havoc every year in every district in this province?

The Hon'ble Nawab K. G. M. FAROQUI, Khan Bahadur: Not that I am aware of. There may be sporadic outbreaks in some places.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Are the Government taking any action in trying to find out the real nature of the diseases in order to find out a remedy?

The Hon'ble Nawab K. G. M. FAROQUI, Khan Bahadur: We have recently started a poultry class in the Veterinary College and action is being taken to find out the causes of poultry diseases.

Mr. NARENDRA KUMAR BASU: With reference to (*b*), will the Hon'ble Minister be pleased to state if he thinks that by maintaining herds of pure Sindhis and Hariana crosses he is improving the yield of milk of goat and sheep too?

(No reply was given.)

Vegetables and fruits of Bengal.

***97. Babu SATYA KINKAR SAHANA:** (*a*) Is the Hon'ble Minister in charge of the Agriculture and Industries Department aware that Bengal has to purchase annually the early variety of cauliflowers, potatoes, beans and other vegetables and mangoes, oranges, lichis and other fruits from places outside the province?

(b) Has the Hon'ble Minister taken expert opinion as to whether most of those vegetables and fruits can be produced in the highlands of some of the districts of this province?

(c) If the answers to (a) and (b) are in the affirmative, will the Hon'ble Minister be pleased to state what steps the Government have been taking or are contemplating to take for the encouragement of the cultivation of those vegetables and fruits in this province?

The Hon'ble Nawab K. C. M. FAROQUI, Khan Bahadur: (a) Yes.

(b) The fruits and vegetables referred to are reported to grow satisfactorily in hilly tracts of this province with the exception of lichis which do better on level alluvium.

(c) Encouragement of production of fruits and vegetables in Bengal is a part of the policy of the Agricultural Department. Among other measures to this end, a horticultural station is being established at Krishnagar with the help of a grant from the Imperial Council of Agricultural Research.

Maulvi SYED MAJID BAKSH: Will the Hon'ble Minister be pleased to state whether Krishnagar is the only place where such a station will be located or is it contemplated that other places will also be chosen?

The Hon'ble Nawab K. C. M. FAROQUI, Khan Bahadur: For the present we have selected Krishnagar for the purpose.

LEGISLATIVE BUSINESS

GOVERNMENT BILL.

The Bengal Criminal Law (Amendment) Bill, 1934.

The Hon'ble Mr. R. N. REID: I move that the Bengal Criminal Law (Amendment) Bill, 1934, as amended by the Select Committee be taken into consideration.

Sir, the Select Committee held a large number of sittings and devoted a great deal of care and attention to the clauses of this Bill and they have made considerable alterations in the Bill to which I should like to draw the attention of the House before they proceed to consider it.

To start with, there are clauses 4 and 5 which deal with the imposition of the death penalty for offences under the Indian Arms Act and the Explosive Substances Act under certain circumstances. It will be seen that the Select Committee have restricted the operation of these clauses to a considerable extent. In clause 3, sub-clause (2), of the original

draft there was a reference to "murder or abetment of murder, or that he knew it to be likely that such firearm would be so used". This has been omitted in the new draft of clause 4 which the Select Committee have put into the Bill. The effect of the restriction is to make this penalty applicable only in certain very restricted cases—in cases of persons who are found in possession of fire arms or explosive articles in such circumstances as to indicate that they were about to commit murder.

Then I would refer to clause 10 which deals with supplementary trials. It will be seen that the Select Committee have omitted sub-clause 1 (*b*) and sub-clause 2 (*b*) and have instead inserted two provisos which will be found at page 4 of the Bill as it is now drafted. The object of this change was to make it quite certain that in these supplementary trials certain evidence which is provided for in the clause should be admissible only against persons whom it had been intended to class amongst the accused from the start, that is to say, persons whose names were included either in the charge-sheet or in the order of Government by which the special Tribunal was constituted to try certain people for certain offences.

Further on it will be found that reference to confessions has been cut out the reason being that during a trial a confession is admissible against a co-accused because an accused cannot give evidence but when a trial has been concluded the co-accused can be examined as a witness himself. Therefore, the Select Committee thought that the reference to confessions should be omitted.

There is an important change in sub-clause (*3*) in the same clause. The wording as regards the matter of recalling witnesses has been changed and this would operate to the benefit of the accused. In the previous drafting the wording was such that it rested with the Commissioners if they considered it necessary in the interests of justice to recall any witness they could do so, but not otherwise. But as the clause reads now, the Commissioners "shall, at the instance of the accused person or his pleader, recall any such witness for such purpose, unless, in the opinion of the Commissioners, for reasons to be recorded in writing, it is not necessary in the interest of justice that the witness should be recalled." That is a considerable change and a change which is obviously to the benefit of the accused persons.

Lastly, as regards this particular clause 10, it will be observed in the Committee's Report that the Committee recommend that copies of evidence recorded under this clause should be given free of cost to the accused persons. The Select Committee decided—and I think rightly—not to include such a provision in the Bill itself but they were assured that such a provision would be made by means of rules issued by Government.

There is an important change in the general arrangement and wording of clause 13 which deals with the powers to be given to District Magistrates to control the movement of young persons under 21 years of age. The wording has been altered in such a way as to—to use the words of the Select Committee—bring out the real intention underlying the Bill, that is to say, the protection and reclamation and safeguarding of youths who are on the border line of the terrorist movement. The original wording was based on section 2 of the Criminal Law Amendment Act of 1930 and it has been changed in such a way as to make it more general and less like the wording of that Act.

There is one amendment to which I will refer at the proper time and which stands in my name—No. 139. This gives an explanation of the words "ordinarily resident" and its object is to provide for cases where boys are educated not in their own home districts but in some school or college in another district.

Clause 15 of the original Bill has been omitted. It was intended to apply the provisions of section 5 of the Criminal Law Amendment Act, 1930, to cases of young persons dealt with under new clause 2A. The Committee quite rightly took the view that section 5 of the Act of 1930 was not applicable to these cases. That section provides that certain officers of Government shall use, as the expression goes, any and every means to enforce compliance with orders made under that Act. In the case of these youthful persons in the early stages of dabbling with terrorism it was held that it was unnecessary to put in this clause.

In clause 16 there is an addition which the Select Committee have put in, in sub-clause (3) which has reference to section 6 of the Criminal Law Amendment Act of 1930. The words "or that it was not possible for him to comply therewith" have been added. The object that the Select Committee had in view was to provide for the case of a person, who though he knew of the existence of some order against him, was unable or incapable or for whatever reason to comply with that order. I have, however, an amendment (No. 162) on this particular sub-clause and I hope when the time comes and I have explained my reasons, it will be agreed that the addition made by the Government amendment adds a necessary qualification.

Then I come to clause 17. It will be seen that the Select Committee have put in a proviso to the effect that "a person in respect of whom an order has been made under sub-section (1) of section 2A shall not be directed to allow his finger impression to be taken". This amendment was made in conformity with the general scheme of these preventive sections, that is to say, these sections which deal with young people who are presumably not very far in the terrorist movement and therefore it was considered to be neither necessary nor appropriate to keep this reference to finger prints.

Clause 19 shows an important change which the Select Committee have made. The original word was "may". It deals with the giving of allowances to dependants of the detenus. The Select Committee, as I have said, have altered the word "may" into "shall" and qualified the clause by adding four lines at the end which limit the amount of allowance which should be given under that clause by the amount which a person would have been in a position to make if he had not been placed under restraint. I need say no more about this than that Government have considered the amendment of the Select Committee and has decided to put in an amendment—No. 190 which stands in my name and I hope to deal with that amendment and its purpose when we reach it.

In clause 23 the Committee have inserted a new sub-clause (3) to section 11B. This deals with cases where a District Magistrate is empowered to take possession of places or buildings which have been used for the purpose of certain undesirable associations. A new clause which the Select Committee have put in gives the Local Government power of supervision and control.

Then there is clause 26 which gave the Committee a considerable amount of anxiety and on which they spent a good deal of time. The whole clause has been redrafted though the substance remains the same. Instead of two clauses we have five.

The words "criminal intimidation" in sections 35 and 36 have been included under sub-clause (*a*) and certain sections of the Indian Penal Code which were previously mentioned in that sub-clause have been omitted as being either unnecessary or inappropriate. But the important additions which the Committee have made to this clause are the words which appear at the end of new section 36 and similarly the words which appear at the end or rather the latter half of clause (2) of section 38—I mean the words "unless he proves that he had such newspaper, book or other document in his possession under circumstances indicating that he did not intend that it should be used for the purpose of inciting to or encouraging the commission of an offence, etc., etc.". These were put in by the Select Committee in an endeavour to safeguard the position of persons who quite innocently and without any unlawful intention had come into possession of objectionable literature of the kind specified in this clause. This of course is an excellent reason for putting in the words and I need hardly say there is no intention of using this clause to harass innocent persons. It seemed however to Government that some alteration was required in the words as drafted by the Select Committee and the House will find that there is an amendment—No. 241 which stands in my name and which is intended to alter these words to some extent and to make them a little more comprehensive. I will go into this in more detail when that amendment comes to us for discussion at the proper time.

The last thing I would refer to is the new section 39 under this clause. This new section has been added by the Select Committee to make it clear whether an offence punishable under section 35 or section 36 should be cognisable or bailable or not. As it runs they make offences under section 35 cognisable and bailable and under section 36 non-cognizable and bailable. Here again the House will find in the list of amendments—amendment No. 265 which stands in my name which is designed to alter the words non-cognizable to cognizable. The reasons for this I shall give later on.

Sir, I have taken a good deal of time in going through the various clauses of the Bill, as amended by the Select Committee, but the changes that the Select Committee have made have been numerous and they are not changes which can be dealt with by merely a passing reference.

Before the House proceeds to discuss the Bill clause by clause, may I just repeat what I said a few weeks ago and that is this, Government have entered on this legislation not lightly but after a very careful consideration of the whole situation and of the measures which they believe that situation requires. The situation as regards terrorism is a grave one, grave not in the sense that there is an immediate risk of widespread insurrection or of disorder on a large scale but grave in the sense that the spirit behind terrorism is still there and that is shown by the fact that recruiting is still going on with an eye not so much to the immediate future but to a little more remote future and specially that point in the future when it is expected that the special measures which have been passed against terrorism will come to an end and it is for this reason that Government attach so much importance first to the preventive sections in this Bill and secondly to those clauses which are intended to make the Acts of 1925 and 1930 permanent. I would ask the Council to face facts, however unpalatable they may be, and I would beg them also—it is worth while saying it again—when they come to the consideration of this Bill to look at it, more from the point of view of the safety of the State than anything else, for, in times of danger—and these are times of danger in Bengal—the interest of the State must override the convenience and interest of individuals and it is only within a stable and ordered State that individuals can have security for life and property, and I would just add this: This terrorist movement has been condemned and condemned in the strongest and the most deliberate terms on all sides of this House. This House therefore is committed to the view that terrorism is a thing which should be brought to an end. May it not therefore be hoped that this House will show its abhorrence of terrorism and make plain to the enemies of the State that it is determined to bring to an end this menace to its existence, by presenting a united point in dealing with this legislation which is solely directed towards bringing terrorism under control.

Mr. PRESIDENT: Several amendments have been tabled with the object of recommitting this Bill. This may be divided into two parts, the first part consisting of motions that propose to recommit the Bill to the Select Committee, as it stands, and the second part consisting of motions that propose to enlarge the Select Committee and then to recommit the Bill. These may be dealt with at this stage.

Mr. P. BANERJI: Mr. President, Sir, I beg to move that the Bill be recommitted.

In proposing the recommittal of this Bill, I must say at once and without fear of contradiction, after hearing the speech of the Hon'ble Member in charge, that this Bill is certainly a barbarous one. Sir, I say barbarous, advisedly, because the Hon'ble Member, while explaining the clauses one after another and trying to substantiate his arguments by reasoning, proposes to stand by those recommendations of the Select Committee which suit his purpose and has tabled amendments to those recommendations which are not up to his mark. He has said that it is a fact that the terrorist activities have been condemned by all sections of this House and also in the countryside. As the Hon'ble Member is desirous of condemning these terrorist activities, there is no denying the fact that, as in the Preamble, the Bill is simply intended to effectively deal with the menace and every sane person, both inside and outside this House, is with him, but the only difference is that his method is such that it will not help him in any way for the simple reason that this is a barbarous Bill, especially in this 20th century. Sir, nowhere in the jurisprudence of civilised countries, the very intention is penalised. Here there are degrees of comparison in punishment. There is the intention, there is the attempt and there is the commission. In every civilised country what is done? When a murder or a similar offence is committed, then one is punished. Even when an actual murder is committed, there is a movement all over the world that death sentence must be abolished as it has been found to be ineffective. Sir, we are first concerned with intention. Circumstanced as we are, we all know that the Executive to-day is trying to take all power from the hands of the Judiciary, and the administration of justice is semi-barbarous because it is playing into the hands of the Executive. What are they going to do with this Bill and with Bills of a similar nature? They are going to take away all the powers from the Judiciary so that even the administration of justice will not be able to keep that amount of dignity which originally the jurisprudence empowered it with. It is often found that the Executive has always made some arrangement for reward in different kinds with the result that the administration of justice to-day is not what it ought to have been. Those members of the Judiciary who are in the confidence of the Executive are given promotions. Therefore the fact remains that the dignity of the Judiciary has been lowered and lowered

to a considerable degree. That being the case, circumstanced as we are to-day, what is our position in a country like this? We have no justice from the Judiciary, and the Executive has been always trying to put down the legitimate aspirations of the people. The Hon'ble Member has said that the interests of the State must be above the interests of the people. May I inquire whether the State lives for the people or the people live for the State? All good governments exist for the good of the people and people do not exist for the State. Therefore, the arguments that have been put forward by the Hon'ble Member have been falsified. Therefore, the Britishers who claim to give freedom to the people of the country are only trying to take away the same thing. After about 200 years of British rule in this country, are not the people of this country being enslaved in every way? The Executive Government can work well if opportunities are given to the people to criticise them properly, both from the platform and the Press. But by these Acts, we are aware, it is difficult to voice public opinion. You will be put into difficulty if you say anything against the Government, as established by law. May I inquire what is this law? The people have no power to voice their feelings, and to say that the Executive is misguided and heading towards a crisis. Then, there is the Press Act. It is only through the Press that public opinion is voiced. We get all sorts of news about the Government and the people from the Press. If the Government were doing things that are just and proper, there would be no reason for shutting the mouths of the people and the Press. We know what is happening in the countryside and in other places through the news agencies. But for these news agencies, it would have been difficult to ascertain news not only for the people but for the relatives of those people who have been deprived of their freedom without any trial. But the Government says that it is not possible to try them because it cannot give sufficient proof against those people that have been detained; so they have to be detained in the interests of the State. So, I ask whether the State exists for the people or the people for the State? I have amply proved that in this 20th century Government are perpetuating the slavery of the people of this country by the enactment of these repressive legislations. Sir, Government talks of giving self-government to the people. Is this the sort of self-government, I inquire of the Hon'ble Member?

Then, Sir, not only the Press and the public platform have been gagged, but the people have also lost all confidence in the British administration of justice. This is the result, Sir, of the British administration of the country for about 200 years.

As I have already suggested, this Bill will never be able to kill the terrorist activities. You have noticed, Sir, that during the general discussion on the budget, member after member referred to the huge waste of public money in this department for tackling the terrorist activities.

Sir, the Hon'ble Member gave us a guarantee that there was absolutely no misuse of power by the police, but we know it for certain that this is not the fact. Sir, the reason for this is that the Hon'ble Member believes the report of the local police as absolutely true. I would ask the Hon'ble Member to go to the *mufassal* with some members on this side like Mr. N. K. Basu and Mr. J. N. Basu and examine the state of affairs in the countryside, and he will find what terrible oppression is going on there. Recently in connection with a question of Mr. Maity about the oppression in Midnapore by the police and the military, Mr. Reid gave answers as if nothing had happened there. Would Government be prepared to hold an inquiry into the matter? Let there be an open independent inquiry by a Committee with the Hon'ble Member as President. I know, Sir, the Hon'ble Member will not be prepared to hold it because he knows that the Government satellites in the police and the military are oppressing and terrorising the people into submission. Sir, I again warn the Government that the result of this oppression by the police would go still further to alienate the saner section of the people from supporting the Government.

Sir, this Bill was first passed in this Council as a temporary measure for five years in 1925. It was brought to this Council again in 1930 and passed as a temporary measure for another five years. Now, Sir, Government has brought it again, and this time it has been brought as a piece of legislation to be permanently placed on the statute book. So far as I can see this Bill is to be placed permanently on the Statute book. I think Government by actions like this have increased acts of violence and abused its powers. This Bill will not have the result that Government desire, as we have seen in the past. Those members who are supporting Government are not correct, as can be seen in the history of all administrations, when written in later years, that the opposers of Government all over the world were the real friends of Government. The misguided opinions of the supporters of Government have often brought about the downfall of the mightiest empires. We stand on opposition, and our opposition is based on the facts before us; we are not like those who do not know the facts. The position to-day is that we feel that such a Bill is not wanted by the people. There have been public meetings in Calcutta as well as in different parts of the Province, and resolutions have been passed particularly requesting Government not to pass this legislation, and also requesting the members of this Council not to support an unjust measure like this. The Hon'ble Member has assured us that this Bill will not be put into effect unless there is absolute proof; mere possession of arms will not call for the death sentence unless complicity in crime is proved. But as stated by Mr. J. N. Basu the other day, in the train derailment case what happened? The coolies were convicted on the evidence put forward by the police and sentenced and afterwards when it was proved that this evidence was not correct,

they were released; later in the Alipore Bomb case, what was the result? The men were convicted not on the evidence put forward by the police, but on the confession of the accused. So the same result in the Manicktola Bomb case. These things will be very difficult to prove; but nothing is too difficult for the police of this Government to make the people make a confession on anything they like. Another attempt is going to be made in this Bill to prove the conspiracy of the people. The real and determined attitude of Government is not to discover conspiracies but to try and discourage the people in their attempts to help themselves by developing their own industries, their own indigeneous industries. In every country they are trying to do away with capital punishment. Government are asking the people to co-operate, but is this what you call co-operation? Do you want co-operation? Do you really want co-operation? If you do, you will have to adopt different methods; you will have to mix with the people, and then try to root out this evil of terrorism. You must look at the other side. I think, Sir, the fact is that the real intention of the Government is not to fight terrorism. The real intention, as has been proved beyond doubt, is to fight the non-violence movement, and the propaganda to improve indigeneous Indian industries, trying to make propaganda for the manufacture of salt and country made goods. But Government is really trying to fight this non-violent propaganda, this non-co-operation movement——

Mr. PRESIDENT: But you have not told us why you want to re-commit the Bill.

Mr. P. BANERJI: I shall come to that presently. The object of the Government is not to fight the terrorist movement, but the other sections of the people. My point is that in this Bill the Hon'ble Member is again seeking to take away the young men and to detain them, and to tie the hands of the people, by giving them small stipends on which it is impossible for them or their families to live, to take away their freedom, and in doing this, the Government will depend entirely on the report of the village *chaukidar* and constable and sub-inspector, and when the case comes before the Government, they do not look to the social position of the people, but depend entirely on the reports of the village police, who have no discretion. Therefore I say, Sir, that nowhere have I heard of the liberty of the people being taken away, and also possession being taken of the guardianship of the young men of Bengal without even consulting their wishes. What guarantee is there? Is it possible for one district officer to take possession of boys and young men of 21 years of age? And even in some cases it will not be practicable for the district officer to consult their parents or guardians. Another point is to restrict their movements, taking away their health sports, their

libraries, and stopping their association with the bodies who supply these sports and other amusements. Government will suddenly take possession of schools and turn out the pupils, and there will be no education for the boys. This is the state of affairs which Government propose under this Bill. I suggest that, in the face of the present opinion of the people as voiced in different parts of the province requesting the Government to consider this measure very carefully, Government would be pleased to remove this sentence of capital punishment. There are also other objectionable clauses which should be reconsidered. It is with this object that I have asked that this Bill be recommitted for further consideration of the Select Committee. With these words, I move this motion.

Dr. AMULYA RATAN GHOSE: I beg to move that the Bill be recommitted with instructions to submit their report by the 24th March, 1934.

The reasons which have been put forward in favour of passing of the report of the Select Committee are not convincing enough that this report as it is, should be passed by this Council. There is a very strong public opinion outside this House and resolutions of public meetings must have reached the hands of Government as well as of the members of this House that this Bill is not wanted by the people of this country as it is. Moreover, Sir, whenever, the question of recommittal arises in this House it is argued as to what is the use of recommitting a Bill to the Select Committee which has already considered it. But, Sir, we have got some practical knowledge of how after the resolution of recommitment is lost the other amendments are treated. There is a very desparate attempt by the Government members as well as those who favour them to curtail debates and discussions, and to prevent members from speaking on the various amendments. They always think as recommittal is lost, other amendments should be carried as it is and no time of the House should be wasted for the discussion of the amendments. Those are the difficulties which we have always experienced after the failure of the motion for recommitment and that is why I have tabled this motion for the recommitment of the Bill so that after the publication of the Select Committee's report and the public opinion of the country had been expressed, the Select Committee can again consider those opinions and come to such findings which might be more acceptable to the people as well as to the representatives of the people in this house instead of forcing a legislation of such a serious nature without giving due consideration to the opinion of the people in this respect. Such repressive legislations were placed before the Council on many other previous occasions and they were by a huge majority carried. But, Sir, what is the result, the net result? What was the condition of the

country before 1904 and what was the country after 1932 or 1933? We have seen that when absolute loyalty and perfect law and order in the country were prevailing before 1904, the country was faced with political movements after the partition of Bengal. And after the partition of Bengal there was the movement for boycott of foreign goods and the purchase of indigenous goods by the people of the country. That agitation was stopped by force. That was not a terrorist movement and there was no anarchical movement in the country but it was stopped by force. Then, again there were the movements for Home Rule and other political movements when the people of the country did not know what terrorism was, what anarchism was, as they are knowing in the present times but after these constitutional movements were suppressed by repressive Acts and laws, day by day the condition of the country became very worse. The political horizon of the country is becoming darker and darker every day. After these repressive laws were passed, the result was that even Indian ladies and girls who are always shy and lived behind the purdahs came out of their seculsion and joined the terrorists. That is the result of these methods of repression. We have always found that these terrorist movements are rather provoked in a sense by the despotic and maladministration of the agents of this Government. This sort of repressive measures we are sure is the root cause of all the evils and that is why the country is going from bad to worse. We have always advised Government that such repressive laws cannot root out the evil, such repressive laws cannot prevent the evil. If this evil is to be prevented, certainly the remedy lies elsewhere. The people have now learnt that they have got their own rights, they are now aspiring for their political freedom, freedom of speech and the liberty of the press. But by these legislations it is being sought that freedom of speech should be stopped, the liberty of the press should be put a stop to and as regards the freedom of the people the less said the better. In this legislation under several clauses it has been sought that death punishment should be given. Death punishment is now being so much tabooed in the civilized countries of the world, but here in this country this sentence is going to be increased by this legislation. For checking terrorist movement if any power is necessary, I do not think there is any dearth of such power. Every day we find in the newspapers that death sentences have been inflicted on two, three or four persons. These sentences are now-a-days so frequently being passed that I think Government have ample powers to inflict them on those whom the court might think fit. If that be so, why then so much cry for more powers and particularly for passing death sentences? Government think that more powers will kill a movement like this, but powers if not properly used—any number of powers have been handed over to Government—will be of little use in preventing or stopping or killing this movement. There are definite laws for dealing with theft, burglary and other kinds of crime. Have

they been stopped, I ask this question seriously. The laws are there but the police is quite inefficient to carry out the wishes of the legislature. It is the police that is to be blamed, but instead of that the police is patted on their back. Unless and until there is an efficient police, no laws can be effective in any way. Why have ordinary murders not been stopped? What are the Government going to do to stop them? I do not think they worry much about that, and even if they do worry, they cannot stop them. So also the political crimes can hardly be stopped by mere passing laws, unless the carriers of the laws are quite efficient and up to the mark. It is idle to blame the people of the country that they sympathise with the terrorists. These are all absolutely foolish talks, because although the Government have got enough powers, arms and laws, they cannot cope with the terrorist movements. The terrorists do not care for their lives, they are out to die and they are out to kill, that is what they are. If they are to be stopped, they can only be stopped by some other ways and not by blaming the people unnecessarily. The people are unarmed, they cannot keep even a *lathi* in their house and they cannot assemble together to think out a plan of action in order to check these crimes. Government with their army, the police and immense power have not been able to root out terrorism, and they ask these unarmed and innocent inhabitants to fight out terrorism which is an impossibility on their part. Instead of doing this, if Government had taken the people in their confidence and if the people were given arms and ammunition to protect themselves, they might have been expected to fight out terrorism. But unarmed and half-fed as they are, they are asked to fight out terrorism, although the constabulary and the army have not been able to fight it out, and for that instead of being blamed they are praised. These questions ought to weigh with the members of this Council. I therefore think that terrorism which is still rampant in the country is not due to the fault of the people or in any way due to their negligence but it is due to the inefficiency of the police and inefficiency of the administration. These are matters which should be considered again and again before a repressive law of this nature is passed by this Council. When the Criminal Law (Amendment) Act of 1925 was passed, arguments were put forward that it was absolutely necessary in view of the fact that the Ordinances were going to be over very shortly. Then again in 1932 it was argued that if there were such laws the Chittagong Armoury Raid Case would not have occurred. But may I ask the Hon'ble Member why political crimes have occurred and are still occurring when there are definite laws, viz., the Bengal Criminal Law Amendment Act, 1930 to prevent them? So it is to be admitted that these laws have failed to root out terrorism, they have failed to be utilised as a treatment for rooting out terrorism. I therefore again implore the House to seriously think over the matter before such a drastic legislation is passed by the Council.

Maulvi ABDUS SAMAD: I beg to move that the Bill be recommitted to the Select Committee with the addition of the following members with instructions to submit their report by the 20th March, 1934:—

(1) Babu Satish Chandra Ray Chowdhdury,

(2) Babu Jatindra Nath Basu,

(3) Maulvi Tamizuddin Khan, and

(4) Maulvi Abdul Karim.

(I have omitted the names of two members whose names were originally suggested, viz., Mr. Syamaprosad Mookerjee and Mr. A. K. Fazl-ul Huq as their consent has not been received.)

Sir, the Bill was introduced in the Council on the 31st January last and on the same day it was referred to the Select Committee after rejecting the circulation motion for eliciting public opinion thereon. The Select Committee met for the first time on the 3rd February last and concluded its deliberations on the 12th idem. I take it for granted that the Select Committee considered the provisions of the Bill very minutely and carefully. In spite of that it must be admitted that the whole thing was done in great hurry, so that the Bill might be passed into law during the current session of the Council. It is true that the Bill as emerged from the Select Committee is a great improvement upon the original draft Bill and for this the members of the Select Committee are entitled to our heartfelt thanks. But, Sir, in spite of important changes effected in the Bill, some of its most objectionable features, especially the provisions relating to the press, still remain. This is probably due to the fact that the members of the Select Committee laboured under a great disadvantage inasmuch as they had no materials before them in the shape of public opinion to help them in their deliberations. It is therefore desirable both in the interests of the Government and the public that the Bill should go back to the Select Committee enlarged by the addition of a few more new members of undoubted sober disposition and possessing sound legal knowledge. The members whose names I have suggested are men whose independence, legal knowledge and sagacity nobody can question. The new Select Committee will have the advantage of considering the amendments already effected, the several amendments tabled by non-official members, as well as the public opinion so far expressed in the press and public meetings.

Sir, I fully anticipate the objections that will be raised against this proposal. In the first place, it will be urged that no useful purpose will be served by a recommittal and that the object of my amendment can be best achieved by considering the provisions of the Bill clause by clause in the open House in the light of the amendments

tabled by the honourable members. This argument, though apparently sound and plausible, has really no force in it. From our past experience we can well anticipate the fate that awaits these amendments. The sanctity of the Select Committee's report will be invoked in the case of amendments tabled by non-official members with the result that not a single of these amendments stands any chance of being accepted, while in the case of official amendments the position will be reversed; the sanctity of official wisdom will then be entitled to greater respect than the sanctity of the Select Committee's report. Such being the position if any further improvement is to be effected it can be done only by the proposed Select Committee, which will be in a position to further consider the provisions of the Bill in the light of the public opinion available up to the time of consideration and the amendments tabled by the non-official members. Of course, recommittal would cause a delay of 2 or 3 weeks, but in view of the great importance of the measure this short delay ought not to stand in the way of my motion being accepted.

Sir, before resuming my seat I would like to make my position clear with regard to my attitude towards the Bill. If I am opposed to the provisions of the Bill it is not because I have any sympathy for the terrorists but because it seeks to provide remedies for the treatment of symptoms and not of the real disease. It may afford temporary relief but will not cure the disease. Sir, since the commencement of the terrorist movement repressive measures have been tried in various forms but with very little effect. What guarantee is there that the proposed measure would succeed when in the past similar strong and stringent measures failed to achieve the desired end. I would therefore humbly suggest to the Hon'ble Member in charge to ascertain first the real cause which fosters terrorist mentality and then to take steps for the removal of that cause. It does not require much intelligence to understand that as long as the cause remains, the effect will naturally follow. Neither the civil disobedience movement nor the publication of information, as contemplated in clause 6 of the Bill, is the real cause of the origin and growth of the terrorist movement. On the contrary the civil disobedience movement acted as a safety valve and kept away a very large number of would-be terrorists from the path of violence. He should do well to remember that the terrorist movement originated with the anti-partition agitation long before we had any idea or conception of the civil disobedience movement. Sir, the civil disobedience movement is now dead, thanks to the strong action taken by the Government, and terrorist movement and political murders are being condemned in the strongest possible language by the leaders of all schools of political thought, but still the movement exists and a further instalment of repressive measures is found necessary to kill it. It may be asked: what then is the cause and what is its remedy? The cause in my humble opinion is more political than

economic. Political murders are presumed to be committed to redress a political grievance, real or imaginary. The terrorists are fairly educated men and keep information about what is happening in the field of Indian politics. From these informations they are led to believe that the Hindus as a community have incurred the displeasure of the Government since the days of anti-partition agitation and that they are being punished for their spirit of patriotism and love of political freedom. They also believe that the Government is consistently following the policy of weakening the influence of the Hindu community with a view to crush that spirit of freedom. They think that if any proof in support of this belief was wanting it has been supported by the Communal Award, an award which the Hindu leaders of all schools of political thought have declared as inequitable and unjust so far at least as the Hindus are concerned. You know, Sir, what intense agitation is being carried on in the country against this Communal Award. All this has naturally made a section of misguided and inexperienced young Hindu students desperate, but being powerless to effect any change in the Government policy by any other means they gave vent to their feelings of the resentment and dissatisfaction by resorting to murder and resistance, believing that by this method alone they can force the Government to change its attitude towards the Hindu community. The idea is certainly foolish and stupid and the sooner they give up such ideas the better for the country and their own community. This in short, Sir, is my diagnosis of the disease and if this is correct the terrorist mentality would continue to remain as long as the cause of dissatisfaction remains. Sir, the remedy in my opinion is very simple. If the Government is really sincere in its profession and is prepared to fulfil its promises as contained in the solemn declaration of His Majesty's Government, then let us have a genuine brand of constitution in which nationalism will have its full play and which will contain within it elements of unity and orderly progress. On the other hand if the Government is not prepared to concede that sort of constitution then let it withdraw the reforms altogether and revert to the good old days of benevolent autocracy. Conciliation and repression cannot go together. There must be either conciliation or absolute repression. With these words I commend my motion to the acceptance of the House.

MUNINDRA DEB RAI MAHASAI: As a mandate of my constituency voiced at a public meeting held at the Hooghly Town Hall the other day, I rise in support of the motion of my friend Mr. Banerji for recommitment of the Bengal Criminal Law Amendment Bill, 1934: our thanks are no doubt due to the Select Committee for some of the alterations which the Bill has undergone in the Committee stage but still there are some most objectionable clauses which required reconsideration by the Select Committee. Some of these clauses far surpass

the barbaric laws of olden days in their severity. Eye for an eye, tooth for a tooth and life for a life was the order of the day in those days but now in the present Bill human life is sought to be taken away on the flimsiest of grounds and on mere suspicion or rather association under suspicious circumstances. Whoever goes armed with a pistol, revolver, rifle or other fire arms or has any such fire arm in his possession or under his control under circumstances indicating that he intended that such fire arm should be used for the commission of any offence of murder, shall, if he is tried by Commissioners, be punished with death or with transportation for life or with imprisonment for a term which may extend to fourteen years. The accused are not going to be tried under the ordinary law of the land in open court or with the help of jurors. They are to be tried by Commissioners specially selected by Government for the trial of these particular accused under all sorts of restrictions. Sentence of death in trials under the Star Chamber method is highly objectionable. Confession under threat of violence or torture or got-up witnesses or tutored evidence by approver to implicate others to save his own skin are not uncommon in this country. The Commissioners may be misled by such evidences—they are after all human beings and to err is human. In these circumstances if a man is sentenced to death and evidence be forthcoming to prove his innocence after his execution, it would then be too late to mend. Is not transportation for life or imprisonment for fourteen years enough and deterrent a sentence for potential terrorists or those wandering in the border-land of terrorism? The real terrorists do not care for death. They commit crimes with one hand and take potassium cyanide with the other. The law however stringent cannot reach them. They care little for life in their mad and senseless pursuits. The special provision for recording evidence is another objectionable feature of the Bill. I do not understand why the Special Magistrate should not record evidence himself. Why should he dictate evidence in narrative form to a stenographer, typist or clerk who under the provision of this Bill are authorised to take down the same. We are indeed living in strange times. It is beyond human comprehension to understand why it shall not be necessary for the Special Magistrate to record even any memorandum of such evidence.

Another dangerous clause required thorough revision. The penalty of three years' imprisonment will be imposed on any person who has in his possession any newspaper, book or other document which contains any words, signs or visible representation which tend to incite or to encourage the commission of any offence of murder, dacoity or criminal intimidation or directly or indirectly express approval or admiration of any such offence is simply monstrous. The possession of such newspaper or book would be enough for a conviction under the Bill. Informers are generally men of despicable character.

Nothing is too mean for them. If they or their employers want to put anybody into trouble they can easily do so under cover of such a law. They can without the least difficulty introduce any such newspaper or book into anybody's house and have him convicted and sentenced to three years' imprisonment. This would also be an instrument of oppression for unscrupulous people to feed fat an old grudge. Of course a man may be let off if he can prove that he had such newspaper or book in his possession under circumstances indicating that he did not intend that it should be used for the purpose of inciting or encouraging the commission of such offence but, Sir, it would be more like আগে লাথ পিছু বাত. He shall be hauled up before the tribunal and shall be subjected to all the indignities of such a trial and it would be a piece of good luck if after much suffering in mind and body and after wasting a lot of money incidental to such trials, he is acquitted. There is a popular saying বাঘে ছুঁলে আঠারো ঘা *i.e.*, if you are mauled by a tiger, it is difficult for the wounds to heal up. These are some of the worst features of the Bill which required reconsideration by the Select Committee.

Sir, for the last few years the Government smithy has been kept busily engaged in forging new instruments of repression. There was scarcely any session of this Council when the Government did not come up with a requisition for fresh repressive instruments. This Council has never been slow in obliging the Executive Government not only by giving their seal of approval to the measures proposed, but also by providing rather unlimited funds at their disposal. But what has been the result? May I ask, Sir, have they been able to drive out terrorism from the land? Certainly not. By this Bill you want to deal more effectively with the terrorist movement. I am afraid you have again taken the wrong way. By this Bill you may terrorise the people but you will certainly not be able even to scotch or touch the real terrorists. I have warned you several times on the floor of this House that you are applying the wrong remedy like a quack doctor. Patent medicines like repression are not always effective. You have tried it several times and have miserably failed. Repression will only help to aggravate the disease. Why not seek other remedies? You may ask what is then the true remedy. If you take us into your confidence we are prepared to offer our suggestions which may help to eradicate the evil. We are not birds of passage but are the children of the soil. We have got to live here and it is needless to say that we want to see the country free from the menace of terrorism which is tarnishing the fair name of Bengal. We are more interested in wiping out terrorism from the land than anybody else. Whenever we find the Government going the wrong way we as representatives of the people think it our duty to warn them, but as they think themselves to be supermen and monopolise all wisdom they do not pay heed to

our advice and exhortations. You have tried your patent remedy several times but as you have failed, why not make an experiment with the remedy we want to suggest.

(The Council was then adjourned for fifteen minutes.)

(After adjournment.)

Dr. NARESH CHANDRA SEN GUPTA: Sir, I should not have thought of supporting a motion for recommittal because my experience of the past few years has taught me to expect nothing from committals or recommittals to Select Committees but I am somewhat heartened by the improvements which have been made by the Select Committee in the Bill which I recognise. That seems to be an indication that given a little more time Government would be willing and would be able to see things in a better light and possibly brought back to reason. It is for this alone that I venture to support the motion of recommittal. Sir, as I have said the Bill has been improved by the Select Committee. There are great blots still remaining. The death penalty for offences which do not result in death has been retained. The gag on the Press is retained unchanged. The limitations upon the circulation of literature remains. Well, these are aspects which deserve further consideration. The Hon'ble Mr. Reid, if I remember aright, justified the death penalty on two grounds, that it was retributive and it was deterrent. I should have thought that Mr. Reid would have weighed his words more carefully before using them. In what sense is this punishment retributive? Retribution is not a very laudable object of legislation. The retributive element is retained in the criminal legislation because it is absolutely necessary that the instinct of vengeance which is roused in the mind of the public should have some satisfaction. For if the punishment is inadequate and if it does not satisfy the mind of the public, the punishment will fail in its object. That is the only extent to which retributive principle is permitted or recognised in criminal jurisprudence. Even if we were living in the days of the Old Testament or of the Twelve Tables we could not expect anything greater by way of retribution than what is laid down in the Old Testament or in the Twelve Tables—an eye for an eye, a tooth for a tooth and a limb for a limb. But what is the retribution proposed by this section. For an attempt which does not cause death you have already provided the death sentence. For being armed with revolvers or pistols with the intention of causing death and even when that intention is not carried into effect or even mature, you say that death sentence is a proper retribution. I submit, Sir, that this idea of retribution of justice would stagger even those primitive people who relied on the *Lextalionis*. The Hon'ble Mr. Reid thinks that it will be deterrent. I frankly recognise that. But those people to whom the existence of the death penalty on the

statute book would be deterrent, would, I submit, never become murderers. Those are not the people who would become murderers. But apart from that there is another aspect of this question which has got to be considered. We have not, I hope, forgotten the story of Robin Hood. We have not forgotten the lessons which Bentham taught—the result of excessive punishment both upon the person who is threatened with punishment and upon the public generally. If you say that for possessing a revolver in circumstances from which you could infer the intention to murder and the person is going to be hanged—when a man has gone so far, there is no more retracing of his steps. He must voluntarily become an outlaw, he must go into hiding and live a desperate life, and there is no way out of it. That is one aspect. Then look at the influence of this upon the public mind. If you impose penalties which are far in excess of the demands of justice, which shock the sense of justice of the people, the people are up against it and the Government will not get the support of the people for the application of those drastic laws on the offender. If you have a law that a man who is found with arms will be punished, and if the punishment is such as is approved by the conscience of the people, you will find, if not thousands, at any rate dozens of people who would be willing to help you. There would be at least dozens of people who would be willing to offer assistance in apprehending the offender. But if they know that the effect of that opinion would be that the man might be hanged and if that shocked their sense of justice then we must not expect any support from the people in the matter of getting assistance from them. These are the aspects which have got to be considered. It is all very well to say that you will hold this punishment in terrorism over the young men of Bengal so that they might be frightened out of terrorism, but the real desperate characters will not be frightened out. But on the one hand, you are making it impossible for a man who may have once slipped into an offence of this character to return to the normal path and on the other hand you are alienating the willing co-operation of the people in the matter of arrest of these persons.

Coming now to the provisions regarding the press and forbidden literature, Sir, the language in which the sections are worded, as I have said before, is exceedingly wide. There is practically no literature worth the name, which might not by a slight stretch of language come under it. Apart from that, assuming that Government will use the powers under this section reasonably—an assumption which we regret to say is not justified by our experience—assuming that they will do so, what will be the result? All the prohibitions, all the prosecutions that have been instituted by the Government in the past, have not absolutely prevented people from getting hold of all this literature which the Hon'ble Member is trying to prevent. This circulation of prohibited literature is going on, you cannot shut out

certain inf..., certain knowledge from coming in at all. If you try to do it the result will be that it will come in in a very garbled, exaggerated form, and with greater mischief than the publication would have done. What happened at the time when newspapers suddenly stopped publication? The publication of certain news was forbidden, at the early stage of the *satyagraha* movement. I remember that on those days wild rumours about the Government and the police were heard, much of which would not have been heard, if it had gone into public print, if public print were allowed to be used, a certain amount of this rumour would not have gone to the public, it could have been checked. Well, there are two sides to these things. You shut out certain information; you do not shut out unauthorised information which is far more mischievous and which goes much further than authorised publication of newspapers. We all know that the newspapers under the vigilance of my friend the Press Officer, has never gone too far. The Government is persisting in looking on one side only, Government is persisting in trying to track down the wrong-doer, the terrorist. They have forgotten the other side. They have forgotten that terrorists are manufactured by every such repressive laws. More or less everyone of us has got anti-social instincts in us; anti-social instincts are inherent in us, in certain of our impulses, but in the normal man these are kept under check by social and psychic restraints. If you remove this check which is in our minds, these instincts will break out. Our young men, patriotic young men, are all imbued with a sense of inferiority, with a galling sense of subjection of the country to a foreign yoke That leads very often to desperate dreams, dreams which in a normal state of things are kept under check, because there are these social impulses and physiological impulses which act as a brake. Each of these repressive measures acts upon the young men so as to take off the strength, and the power of these internal and external checks. Therefore, I would ask the Government to remember that you are not only tracking down existing terrorist, supposing that you can do so, by these laws, but also you are also tending to manufacture terrorists. That is an item which you have to put on the debit side, even if I give you full credit for all that you assume on the credit side. Sir, I submit that it is clear as daylight that these laws, this series of laws which have been promulgated for the purpose of bringing more and more powers into operation against terrorists, those who are suspected to be terrorists and those who are associated with terrorist suspects, and upon the public generally, these laws have on the whole created more terrorists than you had before. Where were these thousands of terrorists who have either been detained or put to death or put in jail since 1929? Where were these thousands of people? They were nowhere. But how have they grown? Well, numerous factors must have contributed to their growth, but the insistence of the Government in introducing one repressive

measure after another has had its share in creating this numerous number. It will be a criminal folly to ignore this factor altogether. When the first Criminal Law Amendment Act was passed, I warned the Government that this was going to be so; when the next measure for an extension was brought out, I pointed out to the Government that in the place of a dozen terrorists who were sought after at that time when the original Bill was passed, there had been hundreds, and I put it to Government that this multiplication of the numbers was very largely the result of these laws. I submit that this is my reading of the situation, but the Government reading is obviously different. Government cannot account for the sudden rise in the number of these multiplication.

(The member having reached the time-limit at this stage resumed his seat.)

Mr. SHANTI SHEKHARESWAR RAY: I support the amendment moved by Mr. P. Banerji. I must admit that the report of the Select Committee as well as the Bill as amended comes as a surprise. As a rule in connection with such measures, the attitude of the Government of Bengal is very stiff. Our past experience has been that measure of this nature, a Bill intended to combat terrorism, comes back from the Select Committee more or less in the original form and is passed by the Council with the aid of the Government practically without any alteration. In this case there has been a departure and the Bill has been modified on many points. Well, I think this must be due to the inclusion of two gentlemen in the Select Committee, Mr. N. K. Basu and Mr. J. L. Bannerjee. Well, Sir, if this has been the result with the addition of only two members from this side of the house and by the efforts of the Select Committee to whom my esteemed friend Mr. A. K. Fazl-ul-Huq referred in no flattering terms the other day, I think if the Bill is recommitted and these members are allowed to give further consideration to the matter the Bill may come back with further improvements. If the Government is charitable and condescends to include the 4 names suggested by Maulvi Abdus Samad, I am sure the Bill will come back with considerable modification. Sir, the Hon'ble Mr. Reid has stated that the Government have not brought in this measure lightly. I do not know whether the Government brought it in lightly or not, but they have certainly brought it in in a slipshod fashion and, if I may be permitted to say, the Select Committee, though they have made great efforts, have left a lot unattended to. That may be due to the short time in which they have considered the matter, but in any case the Bill as amended comes in objectionable form. Sir, it is to the credit of the Select Committee that they have suggested that this measure is intended for the purpose of dealing more effectively with the terrorist movement. That is a very important point and for that all credit is due to the Select Committee for making

the point clear. But Sir, what they have omitted and what the Government have not defined anywhere is the word "terrorist." They nowhere say what is meant by "terrorist." Unless that point is cleared up the attitude of certain members must be in this connection a difficult one to take. Sir, the word "terrorist" has not been defined in any of the Acts, which are going to be amended by this Bill, which I may term in a way as the Mahabharat of the Criminal Laws in Bengal, because in this Bill an effort is made to include all sorts of Acts and for a layman like me it is very difficult to follow or understand the implications or the effects of the amendments that are intended to be carried out by this measure. But Sir, perhaps the Government of Bengal are in a hurry or they are not willing to spend the time in introducing a measure in respect of each Act and so they have come for these wholesale amendments in one Bill. But, as I was saying, the word "terrorist" is not defined in this Bill as well as in any other Act up to this time. Well, the Hon'ble Mr. Reid may consider a person to be a terrorist who opposes him in this Council. Perhaps he may in a moment of weakness be terrorised by our empty words. There are others who may feel terrorised at mere nothing, at a toy pistol. Whereas I being a *zemindar* feel terrorised and take a very serious view of the situation when I hear that in my district the Naib of a brother *zemindar* has been done to death by some tenants, because he was collecting money for paying Government revenue. I consider that a greater act of terrorism than an act which Mr. Reid or Mr. Miller may be inclined to class as terrorism. I would ask Government to make their point clear, to define clearly what is intended to mean by the word "terrorist." If they intend that he is a person who takes to violent means or who takes to the use of arms and revolvers with a view to kill Government officials or tries to raise an insurrection, they ought to make that clear. In that case they would certainly command the support of all persons in this land. But they do not do that. What strikes me is that taking advantage of these isolated acts of murders of Government officials the Government is rushing through a measure which may be used for other purposes. They may try to crush the spirit of nationalism, the movement that goes by the name of *swadeshi* or any movement that may hurt the foreign interests, they may label all these movements as terrorism. I ask the Government to make their point clear. They should make it clear that no national movement intended to develop and strengthen public opinion is intended to be attacked or crushed by this measure, that they are not going to countenance exploitation of this land by foreign exploiters and that this measure is not going to be used in support of these foreign exploiters. This is the most glaring defect of the Bill. As regards details, they will naturally be discussed later on, and I do not want to lay much stress on them just now. There is one point to which I may refer in support of my proposition that this Bill ought to be recommitted with a view to secure an improvement.

Just at present the Government is in a panicky mood. A little time may calm them down, and they may not consider these measures, they may not be prepared to support these proposals which they do now. For instance, just at present it seems the Government of Bengal—at any rate that is the impression that I gather from the amendment of which notice has been given by the Hon'ble Mr. Reid on clause 19—are not prepared to back the recommendation, the unanimous recommendation of the Select Committee about making provision for the family of the detenu obligatory. In that amendment the Hon'ble Mr. Reid seeks to assail one of our most cherished rights. Hitherto under the existing Acts Government have the power to arrest and detain any person without trial under the Bengal Criminal Law (Amendment) Act, but they have to make a provision for the family of the detenue. Well, Sir, that provision suggests that the Government of Bengal realise the injustice of the whole thing. As a matter of fact I recollect that the Hon'ble late Sir William Prentice on the floor of this House in connection with a resolution that I moved stated that he was sick of the whole beastly business. The words, if I remember aright were "beastly business." When the Government have to do this unpleasant work of detaining persons without trial, up to this time their conscience smote them and they agreed to treat——

(The member having reached the time-limit at this stage resumed his seat.)

Reverend B. A. NAC: Sir, it has been said that the Bill should be recommitted with a view to have the help of public opinion. Someone has already complained that the Select Committee acted in great haste because there was no public opinion before them I do not think that is a fact. A meeting was held in the Albert Hall. That meeting was called not to consider the Bill but to condemn it and we were told that the Bill was unanimously condemned. I happened to ask a prominent member who was present there whether all those who had met there, 12 to 15 hundred men, had read the Bill. I was assured that the sections of the Bill were explained by an hon'ble member of this House who has already spoken so that it was on the presentation of a lawyer's point of view that 1,200 people condemned the Bill. If it were possible to make public opinion a real commodity, I shall not be surprised if I would have supported any motion for further public opinion, but we know what it is. Not long ago on another Bill in this House we had public opinion of hundred men signing one opinion from probably hundred parts of Bengal. Not only that, even the opinions which were sent by district boards and municipalities I suggested by their wording a common parentage and one workshop, probably the city of Calcutta. If that is the value of public opinion, I am not surprised myself that Government feel that it is useless to wait for such opinion. Then, Sir, if public opinion is to be so relied upon, we might have had something of it in a constructive form at this session. Member

after member has spoken, indulged in destructive criticism and has not suggested a single thing that a section which has been either partially altered or not at all altered by the Select Committee might have been altered in a certain way to the best advantage for the purpose of dealing with terrorism. Anybody can indulge in destructive criticism. Constructive criticisms require a certain amount of wisdom, and if this House does not give the evidence of constructive suggestions, what can we expect from outside? Someone has said that the terrorists are manufactured by repressive laws. I have not the slightest doubt that that is the honest opinion of my friend who said it, but it is only a matter of opinion and probably he will forgive me if I say terrorists are manufactured by direct or indirect encouragement to their actions, to their support from men from whom different things are expected. That is the secret of the movement of terrorism. Some people have been rather disturbed by the sentence of death provided for in this Bill. I may tell you, Sir, that I am opposed to capital sentence on any account, but that does not come in here. The point is this—does the provision of death sentence kill any body? It ought to be only a warning. For instance in the most perfect law, the law of nature, it is ruled that any body who touches a live electric wire shall die, unless he touches it under certain safeguards. That law does not kill any of us but by that law we are so warned about it that we warn our children, our friends and every body who come to Calcutta for the first time not to go near a live electric wire. If my friends would do the same about terrorism and warn their children, friends and every body, they would find that this Bill even when passed into an Act will have nothing to do and we shall all rejoice. If this Bill has come before us the reason is not, I believe, that Government is anxious to pass a Bill which is so unacceptable, or at least not so grateful to our taste, but because we are lacking in our duty in checking terrorism in the land. If we had exercised our influence, our thoughts, and our activities half as much in stamping out terrorism from this land we should have been all happy and we should have no reason whatever to complain against this Bill. With these few words I oppose all the amendments that have been moved.

Mr. NARENDRA KUMAR BASU: I at first thought that as a member of the Select Committee it would probably be the height of indiscretion for me, to rise and speak either in support of or in opposition to this motion. But that idea has just been shattered and from what I see, namely, that the Chairman of the Select Committee is busy making notes of the speeches, I think he is probably going to speak on this motion; so I thought that it would not be improper if a member of the Select Committee were to speak on this motion. I need hardly say, Sir, that I fully support the motion for recommittal. But my esteemed friend Mr. Nag has forgotten that this is a——

Reverend B. A. NAG: On a point of order, Sir. May I ask, if there is any member of this House named Mr. "Nag"?

Mr. NARENDRA KUMAR BASU: I beg his pardon: he is Reverend Mr. Nag. Well, Sir, the Reverend Mr. Nag is mistaken when he thinks that this is a motion for eliciting public opinion on the Bill. It is nothing of the sort. The motion as it is printed and as it has been moved is a motion for the recommittal of the Bill to the Select Committee. Sir, before I pass on to the grounds on which I think that the Select Committee will be very well advised to pay more attention and certainly a little more time to the provisions of this Bill, I would simply say in passing with regard to the remarks made by several previous speakers as to the necessity for this Bill and its principles: that, probably, they have forgotten and they have been, if I may say so without any disrespect, whatsoever allowed a longer rope by you, Sir, in discussing the principles of the Bill at this stage. I submit, Sir, that at this stage the only motion is the motion for recommittal. That being so——

Mr. PRESIDENT: Order, order. You are mistaken. You forget that there is also a motion that the Bill be taken into consideration; in fact there are three motions before the House, not one.

Mr. NARENDRA KUMAR BASU: I submit, Sir, that so far as the remarks about this House not being obliged to accept the Bill at all and that it will be quite proper for them to object to the motion of the Hon'ble Home Member for the consideration of the Bill is concerned, I do not say anything but for the purpose of recommittal, I was trying to point out to the speakers before me that if they were opposing the motion that the Bill be taken into consideration, that will be one thing, but in support of recommittal the principle of the Bill need hardly be discussed. However, that motion being before the House I need only say that I am surprised that any complaint should be made in this House by the previous speaker that the Bill has been brought into existence because we have been lacking in our duty. I submit, Sir, that so far as the previous speaker himself is concerned—I won't name him if he objects—I can easily say that he has not been lacking in his duty in any way. As a nominated member of the House he has always voted with the Government, so there has been no lack of duty on his part. But so far as this side of the House is concerned, I may say and repeat what I have stated in this House hundreds of times during the last four or five years, that so far as constructive suggestions are concerned, we have made constructive suggestions in spite of the limitations on us and so far as this precious piece of legislation is concerned, if my learned friends would only look to the Order Paper of the day they would see that there have been dozens of constructive suggestions made by several members of this House. I submit,

Sir, that nobody who is not as blind as the proverbial bat, would say that there are no constructive suggestion on this Order Paper. With these suggestions before him it is not open to anybody to say that no constructive suggestions have been made at least with reference to this Bill. However, Sir, what I was going to submit was this: The House will remember that the time given to the Select Committee for the consideration of this Bill was only eleven days, included in which period were, I believe, two Saturdays and two Sundays or something like that. Then again, the fact that the time was short is itself evident from this Paper and the amendments, and the House will have also seen that one of the clauses on which I addressed the House when the Bill was introduced, namely, clause 6, relating to newspapers, that clause has emerged from the Select Committee virtually unchanged and unaltered. There have been several amendments on the other sections of the Bill, some of them good, some bad and some others indifferent. But the fact that the time was short is in my submission conclusively demonstrated by the circumstance that even the Hon'ble the Home Member himself, who has not written any Note of Dissent to the Select Committee's Report and may therefore be taken to have accepted the amendments moved and accepted in Select Committee, has found occasion to give notice of several amendments, at least two of which go to the very principle of the amendments accepted in the Select Committee and are in direct contradiction to the recommendations of that Committee. That, Sir, proves, if any proof were needed, that even the Home Member had not sufficient time to consider the matter in Select Committee and that there he had to accept amendments which on further consideration he has found himself bound to disapprove. At the time the Bill was committed to the Select Committee there were various requests in this House for extension of time, but of course the original motion was passed as it stood. We did not ask for more time in Select Committee because we thought that so far as the Select Committee was concerned it was bound by the resolution of the House. However, Sir, as I was saying, speaking for myself, the House will find that I have had to put in several amendments to clause 6 inasmuch as no change has been made in the Select Committee on that clause, which contains one of the most vital provisions of the Bill. The House will also find that I have groped for several alternatives to this clause and have given several constructive suggestions, and, *pace* my learned friend over there, not destructive criticisms on other sections, and so have several other members of the House who were not members of the Select Committee. I submit that the time given to the Select Committee to consider this very important change in the law of the land was very inadequate and that, given more time, the Select Committee, with or without the additions proposed by my friend, Mr. Samad, would have been able to evolve something better than what they have done. I know that I will at once be met with the statement that if the amend-

ments suggested by us are reasonable, why not move them in open Council? But, Sir, I am betraying no secret when I say that things are not quite the same in open Council as they are in Select Committee. In the Select Committee, as far as I have been able to judge during my experience of the last five years, Government members do not stand upon—what shall I say—upon their sense of prestige, there they are willing to give and take, there they are willing to listen to reason, but in open Council they know that they have got a solid phalanx behind them, and they do not care to tread upon non-official opinion, however valuable it is. I submit that in these matters it is always better that they should be thrashed out in committee rather than in open Council. Sir, I am not at one with my friend the previous speaker that whatever is in nature is always the best. He seems to think that the law of nature is the best law. I do not think so; nor do I think, Sir, that it is absolutely no good asking for public opinion or even conforming to public opinion, because the 1,500 men assembled in the Albert Hall have not all read this Bill. I am quite sure, Sir, that out of the 140 members of this House here and of the 13 or more members of the Select Committee all of them had not or have not yet read the Bill. Sir, for some people it is enough that so and so in authority has spoken and so and so in authority wants this and that thing to be done. To them that is quite enough, it does not matter to what they subscribe. And probably they have not read it or they have not understood it; but that, Sir, is another matter. I know that so far as legislation is concerned, it is and it ought to be the work of experts but in doing their work the experts ought to have the advantage of lay opinion, soundly formed and properly presented.

It is no use having the opinion of these 1,500 men or of these 140 men or of those other 13 men of the Select Committee if the voice, or noise if you call it, of the millions of dumb driven cattle, is not ascertained.

We want that proper attention should be given to the language of the proposed amendments; every word should be weighed and the effect of that upon the existing law should be considered, and for that purpose I submit that the time given to and expended by, the Select Committee was much too short. For this reason if for no other, I would ask the House to accept the amendment to have the Bill recommitted. Recommittal will not bring in such a terrible state of things that the State will be endangered thereby. We have been asked by Mr. Reid to consider that it is our duty to support the State because the situation is grave. I do not know whether any non-official member is in a position to know what the gravity of the situation is but I take it that the situation is not so grave that unless this Bill was passed within the course of this week but adjourned for 3, 4, 5 or even 6 weeks the British Government in Bengal would come to an end. I submit, Sir, that the situation is not so acute as all that and that there is no evidence before

the House that the situation is at all one of gravity. That being so, I submit that the Hon'ble the Home Member will be well advised to accept this amendment that the Bill be recommitted for further consideration by the Select Committee.

Mr. R. MAITI: Mr. President, Sir, in supporting the motion for recommittal of the Bengal Criminal Law Amendment Bill, 1934, I make no hesitation in telling the House that the Select Committee to which the Bill was referred for consideration have absolutely failed to discharge the duty which was imposed on them. Sir, though the Select Committee have made several changes in the Bill—changes which I am not prepared to describe as improvements of much importance—we find that there still remain in it a great many objectionable features of a very grave character, which never have found place in any piece of legislation in any country. Here I propose to point out some of the provisions of the Bill to which the Select Committee has not paid so much attention as was expected of them.

Sir, death-penalty provided in clauses 3, 4 and 5 of the original Bill which makes the supposed intention to commit a crime as much punishable as the crime itself is still there in the report of the Select Committee. Sir, it is absolutely wrong to suppose that a man having been found in unlawful possession of arms or explosives for purposes of committing murder, will certainly commit the crime itself. No one could conceive of such a punishment in a case where a man could change his mind at a subsequent stage and restrain himself from committing any overt acts altogether, although he may have entertained the idea of committing murder at the beginning with the weapons found in his possession.

Sir, at the time of introducing the Bill in this House the provision for the sentence of death was criticised and condemned so strongly by the members representing all sections or groups that we were absolutely certain of its deletion from the Bill by the Select Committee to which the Bill was referred for consideration. But, Sir, all our hopes in this respect have been shattered to pieces and we found that the Bill came out of the Select Committee with the provision for death-penalty remaining in tact. As far as we can see from the report of the Select Committee, there was not a single dissentient voice regarding this death-penalty except that of Mr. N. K. Basu who has submitted a separate note of dissent.

Sir, it is well known that in all countries there has been a general cry for the abolition of death penalty and it is really surprising that our country has been trying to perpetuate the sentence of death even in cases where the intention alone has been made punishable. The idea itself is monstrous and revolting and contrary to all canons of justice.

Then again, Sir, there has been no suggestion by the Select Committee for substantial change or modification in clause 6, which empowers the local Government to prohibit by notification the publication in any newspaper, book or other document, of any class of information which may, in its opinion, tend to create an atmosphere favourable to the gaining of adherents to the terrorist movement. It is beyond one's comprehension to understand how the Hon'ble Member can ask this House to accord their sanction to the administrative fiat of the local Government without allowing the judiciary to pronounce its verdict in such a matter which vitally affects the primary functions of the press.

Then again, Sir, there is clause 10, which authorises the admission of evidence already recorded in the trial which is pending or has been previously adjudicated upon, as evidence against a man who was not a party to it at the time when such evidence was recorded against him. The only change which the Select Committee has proposed in this connection is merely to add a proviso for the inclusion of the name of such person with the names of the persons under trial or previously tried. Sir, this is no improvement upon the clause. What is most objectionable is that a very valuable right of taking such evidence by way of cross-examination by the person against whom such evidence is to be used, is being taken away and the Select Committee have overlooked this point altogether.

Sir, in clause 11 procedure laid down for taking down the evidence is most objectionable inasmuch as that there is no proper safeguard provided by the Select Committee for the correction of wilful or negligent omission of a very important portion from the evidence by a stenographer, typist or clerk who shall take down the same, except that of any errors of a clerical nature.

Sir, in clause 16 dealing with realisation of fine from parents or guardians, as well as in Chapter III dealing with possession of certain literature the principle laid down by the Select Committee, viz., that the accused will have to prove his innocence, is preposterous and offends against the very fundamental principle of criminal law.

Then, Sir, there is no provision made by the Select Committee for compensating persons whose houses or buildings are taken possession of under clause 23 of the Bill, as has been pointed out very rightly by Mr. N. K. Basu in his note of dissent.

Lastly, Sir, it is most astonishing to find that the proposal for making these measures permanent has not at all been considered by the Select Committee. There is nothing to justify the detention of persons without trial for an indefinite period.

Sir, these are the most objectionable features of a very important character, though there are many more which I need not discuss here

for want of sufficient time at my disposal. Sir, I beg to submit here that the Select Committee undertook a great responsibility in this matter but I regret to have to say that either they have not paid proper attention to the consideration of these objectionable clauses or they have made their deliberate choice in retaining them. Any way, it is sufficiently clear that the Select Committee have not paid sufficient attention which a Bill of this nature really deserved.

Sir, when there is a proposal for making this piece of legislation a permanent thing in the Statute Book and when it is apprehended that this piece of legislation in its present form will greatly hamper the legitimate activities of the press and the public, I have no hesitation to suggest that the Select Committee must be given further opportunity of considering the provisions fully in the light of the observations which the other members and I have placed before the House. Sir, this is a Bill which has evoked a great deal of opposition in the country and has been strongly condemned by the Press and every platform and I believe that there is hardly any supporter of this Bill outside this House. Sir, in view of the serious nature of the Bill, we appeal to the Government that they will not hesitate to accept this motion for recommittal as there is no hurry about it.

With these words, Sir, I support the motion wholeheartedly.

The Hon'ble Mr. R. N. REID: The motions we are discussing are the amendments which move that the Bill be recommitted, and I propose to confine my remarks to that point. I think if some stranger had listened to the speeches of the first two members who spoke in support of their motions for recommittal of the Bill, he would have been astounded. For I listened with considerable attention to the speeches of Mr. Banerji and of Dr. Amulya Ratan Ghose, and I must say that I found in them extremely little that had any bearing on the point of recommittal or could be considered as arguments in favour of the amendment. All I could extract from what I heard of Mr. Banerji's speech was to the effect that the people did not want this Bill. If the people did not want this Bill, it is his duty as a representative of the people to oppose this Bill, but what he expects by again recommitting, I am totally unable to conceive. Similarly Dr. Amulya Ratan Ghose—I took his words down—said that he hoped that after the publication of the Select Committee's report, and the opinion of the public—by which I take him to mean the opinion of Dr. Ghose,—and the opinion of the country have been expressed, the Select Committee should consider those opinions, and after the members of the Select Committee had heard what he had got to say about the Bill, they would go back to consider the Bill further in a manner which was acceptable to him and other movers of the motions for recommittal.

Maulvi Abdus Samad's remarks amounted to this: that the Bill ought to be recirculated for eliciting public opinion. The motion for circulation was made when the Bill was introduced, and I do not think I need go into that again.

Maulvi ABDUS SAMAD: On a point of order, Sir. I beg to submit——

The Hon'ble Mr. R. N. REID: I did not say that he moved a motion for circulation in the present instance. My point was that his remarks amounted to that. I might have misunderstood him, but that was how I interpret him.

Two other members, Dr. Sen Gupta, and I think, Mr. Shanti Shekhareswar Ray, if I understood them correctly, hoped that if the Bill was recommitted, the Select Committee would whittle it down still further and make it more acceptable. I do not think that is a good ground for recommitting to the same Committee.

Mr. SHANTI SHEKHARESWAR RAY: On a point of personal explanation, Sir. I did not mean that the Select Committee would whittle it down further, but what I suggested was that they would make an improvement.

The Hon'ble Mr. R. N. REID: Exactly so, Sir. I am interpreting the honourable member's words in my own way; possibly I might misrepresent him, but I do not think I did.

Then as regards Mr. N. K. Basu, who apparently was goaded into speaking this evening because of the remarks made by Mr. Nag, whom he preferred to call *nag*, and also by the fact that he had seen me taking notes though he felt some diffidence in doing so. However, he complained that he had not sufficient time to consider the Bill properly in the Select Committee. Well, there I beg to differ from him. The Select Committee were given 11 days, I submit, including two Sundays and also including—I think I am right in saying—two days on which Mr. Basu disappeared from Calcutta to a health resort in another province. I submit, Sir, that the Committee, when they did sit, sat for a considerable period of a time and they did go into the Bill very carefully. They considered it clause by clause and they did not hurry. Mr. Basu complained bitterly about the way in which clause 6 was treated. Well, Sir, Mr. Basu was present when clause 6 was being

considered. He was also present when clause 13 which was almost entirely redrafted was being considered. He was also present when clause 26 which was also entirely redrafted was being considered. I leave the inference to the House. I do not think we need spend much more time over this question of recommittal and I cannot believe that the House as a whole really thinks there is anything to be gained by a recommittal of this Bill. So, I beg to oppose the amendments.

Mr. P. Banerji's motion for recommittal being put a division was taken with the following result:—

AYES.

Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kishori Mohan.
Choudhury, Maulvi Nural Absar.
Fazlullah, Maulvi Muhammad.
Ghose, Mr. Amulya Ratan.
Hoque, Kazi Emdadul.
Maiti, Mr. R.
Raikat, Mr. Prasanna Deb.
Rai Mahasai, Manindra Deb.
Ray, Mr. Shasti Shekhareswar.
Roy, Babu Nocoul.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Khan Bahadur Maulvi Emdaddin Ahmed.
Armstrong, Mr. W. L.
Ashworth, Mr. C. R.
Bai, Babu Lalit Kumar.
Bai, Rai Sahib Sarat Chandra.
Banerji, Rai Bahadur Kochab Chandra.
Barman, Babu Premhari.
Barma, Rai Sahib Panchanan.
Bazir Uddin, Khan Sahib Maulvi Mohammed.
Birkmyre, Mr. H.
Bose, Mr. S. M.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Chowdhury, Haji Badi Ahmed.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. R. G. A.
Ezaulji, Maulvi Nur Rahman Khan.
Faruqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. N.
Ghosh, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhaj Nawab Bahadur Sir Abdulkarim, of Dildaar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Mr. P. N.
Hagan, Khan Bahadur Maulvi Ashraf.
Hagg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Muhammad.
Hussain, Maulvi Latafat.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Mr. Razaur Rahman.
Khan, Maulvi Tamizuddin.
Martin, Mr. D. M.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Mitra, Babu Sarat Chandra.
Momin, Khan Bahadur Muhammad Abdul.
Mukherji, Rai Bahadur Satish Chandra.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Mullick, Mr. Mukunda Behary.
Nag, Reverend B. A.
Nag, Babu Suk Lal.
Nandy, Maharaja Srin Chandra, of Kasimbazar
Nasimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Norton, Mr. H. R.
Quasem, Maulvi Abul.
Raheem, Mr. A.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Ray, Babu Amulyadhan.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Ray Chowdhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Babu Jitendra Nath.
Roy, Mr. Satkowar Singh.
Roy, Mr. Surul Kumar.

Roy, Mr. S. N.
Roy Choudhuri, Babu Hem Chandra.
Sadeekullah, Maulvi Muhammad.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Shah, Maulvi Abdul Hamid.
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur.
Soleiman, Maulvi Muhammad.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Sumner, Mr. S. R.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deG.
Woodhead, the Hon'ble Mr. J. A.

The Ayes being 16 and Noes 86 the motion was lost.

(The House was then adjourned for 15 minutes.)

(After adjournment.)

Dr. Amulya Ratan Ghose's motion was then put and lost.

Maulvi Abdus Samad's motion was then put and lost.

The Hon'ble Mr. Reid's original motion was then put and agreed to.

Clause 1.

The motion that clause 1 stand part of the Bill was put and agreed to.

New clause 1A.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I suggest that this motion be taken up later on.

Mr. PRESIDENT: Very well.

Clauses 2 and 3.

The motion that clauses 2 and 3 stand part of the Bill was then put and agreed to.

Clause 4.

Mr. NARENDRA KUMAR BASU: I beg to move that clause 4 be omitted.

Sir, the members of the House will be pleased to remember that it has been stated by the Hon'ble the Home Member while speaking on

his motion that the report of the Select Committee be taken into consideration that clause 4 has been considerably modified by the Select Committee. Clause 4 is an amendment proposed to be inserted in the Indian Arms Act, 1878. Under that Act going armed or possessing arms in contravention of the provisions of that Act is punishable and punishable with imprisonment, for I believe under the original Act it was punishable with three years' rigorous imprisonment, but in 1932 by Act XXI of 1932 this Council amended sections 19 and 20 of the Indian Arms Act as follows. After section 19 which as I have said prohibits going armed with any firearm in contravention of a license granted under the Indian Arms Act, the following new section was added:—

"Notwithstanding anything contained in section 19, whoever commits an offence under clause (*c*) or clause (*e*) or clause (*f*) of section 19 shall, if the offence is committed in respect of a pistol, revolver, rifle or shot gun, be punished with transportation for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, or with fine." And after section 20 of that Act which prohibits the possession of fire arms, the following proviso was added:—

"Provided that if an offence committed under this section is in respect of a pistol, revolver, rifle or shot gun, the offender shall be punished with transportation for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, or with fine".

Therefore, Sir, the effect of this proposed clause 4 is to add the sentence of death to the other sentences prescribed under the previous Act, Bengal Act XXI of 1932, in certain cases, and what the clause says is this: "Notwithstanding anything contained in this Act, whoever goes armed with a pistol, revolver, rifle or other fire arm in contravention of the provisions of section 13 or has any such firearm in his possession or under his control in contravention of the provisions of section 14 or section 15" under certain circumstances. I will ask the House to consider the words "under certain circumstances" very carefully—"under circumstances indicating that he intended that such firearm should be used for the commission of any offence of murder shall, if he is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, be punished with death, or with transportation for life" and so forth, that is to say, we are asked to provide that in those cases in which the Local Government directs that the trial of a particular person shall be by Special Commissioners and not in the ordinary courts, if there are circumstances indicating that the person who went armed or possessed fire arms intended that such fire arms should be used for the commission of an offence of murder, he shall be punished with death. (A VOICE: or with transportation for life)

I submit that I am reminded that in the clause itself there is the provision "or with transportation for life". May I remind my honourable friend that the words "transportation for life" are already there in Bengal Act XXI of 1932 whether the trial is held by Commissioners or by the ordinary courts in which my honourable friend seems to have very little confidence. Therefore the words "or with transportation for life" are really of no value. If the words "with death" be omitted, I am quite sure the Home Member will say "well, I do not want the Act, thank you; it is no extension of the existing law; the only extension of the existing law is that in certain cases these offences are made punishable". I was going to submit that this proposed extension is wholly unwarranted. Firstly, as I have stated the extension is to be limited only to those cases in which the Local Government sets up a Special Tribunal to try these offences. I would at once be told, I know, that the Local Government would not appoint a Special Tribunal except in the case of terrorists, that is to say, in the case of those people whom the Local Government consider to be terrorists. Apart from the fact that the Local Government is apt to make mistakes, I will not say that it is more prone to make mistakes than anybody else, but apart from the fact that the Local Government does make mistakes, I submit that, before a trial is ended, for the Local Government to make up its mind whether a person is a terrorist or not is something like putting the cart before the horse. The Local Government as soon as a man is arrested makes up its mind that he is a terrorist or belongs to a terrorist gang and thereupon sends the case up to a Special Tribunal instead of to the ordinary court, because if he were sent up before the ordinary court then this provision would not apply. It is because the Local Government think that he is a terrorist or belongs to a terrorist organisation that the Local Government sends the case up before the Commissioners and the Commissioners will by this clause have the power to sentence him to death. I shall not pause to say that the legal calibre of the Commissioners is any the less inferior to that of the District and Sessions Judges, because these Special Tribunals are presided over by at least one senior District and Sessions Judge and he is assisted almost always by another officer of equal rank. That being so, I submit it is absolutely ridiculous, to say the least of it, to suggest that any Judge worth the name would sentence a man to death for possessing a pistol under circumstances indicating that he intended that such firearms should be used for the commission of any offence of murder. The difficulty is in proving the circumstances which would indicate to any Tribunal with that degree of finality with which the Tribunal's decision must be come to in order to allow it to sentence an offender to suffer the extreme penalty of law. If the circumstances were such that this sort of deduction would or would not be drawn, then I submit that there is no human being acting as a Judge whether he is a member of a Special Tribunal or is acting as a Judge by himself with the assistance

of jurors or assessors that will pass the sentence of death. Then take the beautiful vagueness of the words "circumstances indicating that he intended that such fire arms should be used for the commission of murder". Members of the House will kindly remember that in a case under this section it is not only necessary but not intended by you, the members of the Council who are legislating this, that any murder should have actually been committed. You say that if a person carries a pistol under circumstances indicating, not proving, that the intended that the pistol should be used for the purpose of murder, you will sentence that man to death. I submit that that is a proposition which has only to be stated boldly to be repudiated by every right thinking man who has any element of the English system of Jurisprudence in him. I shall just tell the House that in the Indian Penal Code there are only eight sections which provide for the penalty of death, namely, section 121, 132, 194, 302, 303, 305, 307 and 396. Of these 8, 3 relate to cases where the offence is committed by a man who is already a life-convict, because there is no other penalty open to him. Therefore, even though murder has not been actually committed, the law says that a life-convict may be sentenced to death. In two other cases, namely, in cases under sections 121 and 132, the offence is that of waging war and inciting mutiny in the Army. So that barring these 5 cases there is no provision in the criminal code of the country where the penalty of death is inflicted in a case where a human life has not been taken. I am aware that this Council in its wisdom passed an amendment to section 307 of the Indian Penal Code regarding an attempt at murder, to the effect that, an unsuccessful attempt at murder, even though no hurt is caused, can be punished with death. I am aware of that, Sir, but I shall remind the House that in the Code, which has stood the test of three quarters of a century and more, section 307, which is the section which penalises an attempt at murder says that "whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death, shall be guilty of murder and shall be punished with imprisonment of either description for a term extending to 10 years and may also be liable to fine; and if hurt is caused to any person by such act the offender shall be liable either to transportation for life or to such punishment as is hereinbefore mentioned." Then we come to the 3rd clause to which I have already referred: When any person offending under this section is under sentence of transportation for life he may if hurt is caused be punished with death. Members will kindly see with what care and consideration human life, even the human life of a life-convict, is treated under the existing law. Sir, the grim sentence of death is not passed even where a life-convict attempts to commit murder unless hurt is caused. I submit that that is the policy of the law and that ought to be the policy of the law. So far as its being a deterrent in certain cases is concerned we have had that argument flourised before our eyes

and ears but I would ask the Hon'ble the Home Member to be kind enough to inform the Council if he knows of any body of terrorists or any person who incites terrorism or supplies arms to them, to whom a death sentence would be a more effective deterrent than a sentence of transportation for life. So far as terrorists themselves are concerned, we have seen and heard of instance that terrorists go about with a pistol or revolver in one hand and poison in the other. They are not in the least terrorised by legislative provisions of this description, and I submit that no case has been made out that a purveyor of instruments for terrorists is more afraid of the punishment of death than of punishment of transportation for life, or that there has been any instance in which a smuggler who supplies arms to terrorists has ever been discouraged in his diabolical trade by that fear of the penalty of death. As I began by saying, Sir, the penalty of death is reserved in all systems of law to the taking of human life, but to say that the penalty of death shall be visited upon a person who does not take life but who simply carries arms under circumstances indicating that he intended that murder should be committed, is, I submit, a travesty of legislation. Sir, there is a trite saying that the Devil does not know what is passing in the minds of a man, and to try to prove by circumstantial evidence that a person intended that the arms he possessed or was carrying should be used for the commission of a murder is, I submit again, asking for a standard of proof which not even the Bengal policeman is capable of attaining. The House will also remember that the language of the clause is "indicating that he intended that such firearm should be used for the commission of any offence of murder....."; that is to say, not the commission of an offence of culpable homicide not amounting to murder or the actual commission of the offence of murder, but simply an "indication" to commit a murder. I submit that when a man parts with his gun to another person to require the proof that he parts with it with the knowledge that the person to whom he supplies it will not take human life without being actuated by grave and sudden provocation, that is to say, that that man shall be guilty of culpable homicide amounting to murder—is doing something which to say the least of it is simply absurd! If these sections were not amended but left as they are now, I can confidently predict that no judge in the country would pass a sentence of death in a case of this description, and my request to the Hon'ble the Home Member accordingly is that he should not persist in legislating in a fashion which is bound to be a dead letter. The efficacy of this section is, as I have already tried to submit, that it provides for the punishment of death. As you know in your heart of hearts no human judge and no body of judges however recruited would in a case of this description and on circumstantial evidence of the use or not-use of a firearm supplied by a third party to the accused person, would award the death penalty, and to say that the accused

knew or that the circumstances indicated that he knew that the gun would be used for the purpose of committing an offence of murder and murder alone, is I beg to submit, asking for a finding which is absurd. That being so, why should you alienate public sympathy by having a provision of this description. We know the volume of opinion that there is in this country about these particular provisions, in clauses 4 and 5, and I submit that if these two clauses were not omitted—I will now limit myself to remarks on clause 4—I submit if these clauses were not omitted it would antagonise the public feeling of all sections of the community. It is no use saying that you hold this provision in reserve over the smugglers of arms. We have already made the punishment for smuggling of arms much too drastic and to legislate on these lines simply to have a provision in the law which you know will not be used but which will merely antagonise public feeling is, I submit, not only a crime but is a blunder, and I hope Government will not persist in asking that this clause should stand.

Babu JATINDRA NATH BASU: I too have felt some of the difficulty that my friend Mr. N. K. Basu has felt about the wording of this clause. As Mr. Basu has pointed out the Arms Act as amended by Act XXI of 1932 makes the punishment as provided in the original Arms Act drastic to this extent that transportation for life also is included in it, though the offence is more or less the same. Sir, it is not clear to me why another new provision should be added. If it were the intention to add the punishment of death, then words indicating that death punishment should be awarded, could be added to the section as it exists in the previous Act, but it is a completely new section. It is not clear to me as to why this new section is being added; it is practically, at least to a great extent, a repetition and it would add to the difficulties of law courts if such a provision were inserted in the Act which has to be administered by them. The insertion of so many provisions will merely confuse them instead of stating the thing in a better phraseology.

Kazi EMDADUL HOQUE: I beg to support Mr. Narendra Kumar Basu. At the very outset I should like to make my position clear. I do not hold any brief for the terrorists, nor do I have any sympathy for their arms and activities. Terrorism is certainly an evil. It is a menace to the State,—a menace to the country and a menace to any legitimate demand for self-government. It is also a menace to any legitimate agitation that is set on foot to gain freedom for this country. So by all means we want to stamp out terrorism out of the country, but not by passing a legislation of this nature. We do not want to stop terrorism by means of Ordinances and repressive measures

like this. There are other methods more peaceful, methods by which the terrorist menace could be stamped out; but none of these have been suggested in the Bill.

Now, Sir, I submit that my anxiety to stamp out terrorism is not in any way less than the anxiety of the members on the Government benches. But what I suggest is that Government should make an honest effort to stamp out terrorism instead of doing it in a haphazard manner. Well, I ask the hon'ble members——

Mr. PRESIDENT: Order, order. I must adjourn the Council now.

Adjournment.

The Council was then adjourned till Tuesday, the 6th March, 1934, at 3 p.m., at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Tuesday, the 6th March, 1934, at 2-30 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 108 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Managing committee of the Dinajpur Sadar Girls' High English School.

*98. **Maulvi HASSAN ALI:** (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to state the names of the members of the present managing committee of the Dinajpur Sadar Girls' High English School?

(*b*) When was this present committee reconstituted?

(*c*) Is it a fact that no meeting of the managing committee was held during the last 7 or 8 months?

(*d*) If the answer to (*c*) is in the affirmative, what are the reasons for not holding any meeting for so long a time?

MINISTER in charge of EDUCATION DEPARTMENT (the Hon'ble Mr. Khwaja Nazimuddin):

(*a*) 1. The District Magistrate—*President.*
2. Rai Sahib Jatindra Mohan Sen, B.L.—*Vice-President.*
3. Dr. Jamini Kanta Ghose, L.M.S.—*Secretary.*
4. Babu Bijoy Ranjan Mitra, B.L.
5. Maulvi Hashan Ali, M.A., B.L., M.L.C.
6. Maulvi Mahammad Kader Baksh, B.L.
7. Maharaja Jagadish Nath Roy.
8. Dr. Tarakeswar Chakrabarty, L.M.S.
9. Miss N. Sen, Assistant Inspectress of Schools, Jalpaiguri.
10. Head Mistress of the School—*ex-officio Assistant Secretary.*
11. Mr. K. N. Sen, B.A., teacher.
12. Miss I. Z. Peters, teacher.

(*b*) The present committee was reconstituted on 13th March, 1932, and the formal approval of the Syndicate was obtained in September, 1933.

(*c*) No meetings were held on September 7th, 1933, and January 23rd, 1934.

(*d*) Does not arise.

Maulvi SYED MAJID BAKSH: With reference to (*c*), what is the time specified for holding meetings of this committee?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Once in every two months except when vacation intervenes.

Maulvi SYED MAJID BAKSH: It seems that that rule was not followed in this particular case.

The Hon'ble Mr. KHWAJA NAZIMUDDIN: There was vacation in between.

Maulvi SYED MAJID BAKSH: But even during that period there was a meeting?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: Perhaps the Hon'ble Member may be right.

Tangi-Tangail Railway scheme.

*90. **Maulvi NUR RAHMAN KHAN EUSUFJI:** Will the Hon'ble Member in charge of the Public Works (Railways) Department be pleased to state—

(*i*) at what stage the Tangi-Tangail Railway scheme stands at present; and

(*ii*) whether there is any likelihood of the said scheme being taken up in the near future?

MEMBER in charge of PUBLIC WORKS (RAILWAYS) DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*i*) The scheme is under the consideration of the Railway Board.

(*ii*) The reply is in the negative.

Premature retirement of ministerial officers.

*100. **MUNINDRA DEB RAI MAHASAI:** (*a*) Will the Hon'ble Member in charge of the Finance Department be pleased to state the general rules and procedure obtaining in the Secretariat and other attached offices under Government for the premature retirement of ministerial officers before 55 years after full qualifying service?

(*b*) If, while on leave on medical ground preparatory to retirement, the officer regains health and applies for permission to rejoin his duties, is he permitted to rejoin?

(*c*) If the answer to (*b*) is in the negative, what are the reasons?

(*d*) If compelled to retire, will such officer be entitled to any gratuity or compensatory allowance irrespective of the pension earned?

(*e*) If the answer to (*d*) is in the affirmative, what will be the scale of such gratuity or allowance?

MEMBER in charge of FINANCE DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*a*) A ministerial officer may, under article 465 of the Civil Service Regulations, be permitted to retire on a retiring pension after completing 30 years' qualifying service, even though he has not reached the age of 55.

(*b*) This rests with the discretion of the head of the office concerned.

(*c*) and (*e*) Do not arise.

(*d*) No.

Calcutta Electric Supply Corporation, Ltd.

*101. **Mr. S. M. BOSE:** (*a*) Will the Hon'ble Member in charge of the Commerce Department be pleased to lay on the table a statement showing—

(*i*) what has been the dividend declared by the Calcutta Electric Supply Corporation, Ltd., for each of the years 1920-32; and

(*ii*) the amount of bonus shares declared for any, and which, of the said years?

(*b*) What was the Reserve Fund in 1920 and that in 1932?

(*c*) Are the Government in a position to state what is the approximate cost of production per unit of electricity supplied by the Calcutta Electric Supply Corporation, Ltd.?

(*d*) Is the Hon'ble Member aware of general public feeling that the present charge—a flat rate of 4½ annas per unit—is too high?

(*e*) Are the Government considering the desirability of urging upon the Corporation for the introduction of a sliding scale for rates to be charged depending upon the profits made?

(*f*) Is the Hon'ble Member aware of the charge made per unit in London? If so, what?

MEMBER in charge of COMMERCE DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*a*) (*i*) A statement is laid on the table.

(*ii*) Bonus shares were issued in 1927 in the ratio of 1/10th of the ordinary shares standing in the names of the holders of the ordinary shares. The total issue in respect of bonus shares was 136,671 shares of the nominal value of £1 each.

(*b*) The Reserve Fund in 1920 was £155,911-11-6. In 1932 the Reserve Fund (including premiums on ordinary shares, £155,049-6-4) was £1,120,841-16-7. The capital in 1920 was £1,655,000 as against £3,404,580 in 1932.

(*c*) The average cost of production per unit of electricity as supplied to all classes of consumers is 1·167 of an anna.

(*d*) No; the nominal flat rate for domestic supply is 4 annas 6 pies, but the net rate payable by the consumer is 2 annas 9 pies except in Serampore and certain other outlying areas where the net rate is 3 annas 3 pies.

(*e*) No.

(*f*) A statement is laid on the table.

Statement referred to in the reply to starred question No. 101 (a) (i) showing the dividends for the years 1920-32 declared by the Calcutta Electric Supply Corporation, Ltd.

1920	..	10%+1% bonus.
1921	..	10%+1% bonus.
1922	..	10%+1% bonus.
1923	..	10%+1% bonus.
1924	..	12%
1925	..	12%
1926	..	12%
1927	..	12%+4*d* per share bonus (equivalent to 1·66%).
1928	..	12%+4*d* per share bonus (equivalent to 1·66%).
1929	..	12%+5*d* per share bonus (equivalent to 2·08%).
1930	..	12%+5*d* per share bonus (equivalent to 2·08%).
1931	..	12%+3*d* per share bonus (equivalent to 1·25%).
1932	..	12%+2*d* per share bonus (equivalent to 0·83%).

Statement referred to in the reply to starred question No. 101 (f) showing the charges per unit made for the supply of electricity in London.

District.	Lighting.	Cooking.	Remarks.
Battersea	3¾d	1d.	
Bermondsey	5d	1d.	
Bethnal Green	4d—½d	4d—½d	Block tariff.
Brompton	5d	1d.	
Charing Cross	5d—2½d	1¾d—1d	Sliding scale.
Chelsea	5d	1½d.	
Chiswick	5d	3d	Rebate subject to dividend.
City of London	5d—2½d	1½d	Sliding scale.
County of London	6d—5d	2d—1½d	Ditto.
Fulham	3¼d	¾d.	
Hackney	5d	¾d.	
Hammersmith	3½d—3d	¾d+7½% of Rateable value	Sliding scale.
Hampstead	3d	¾d.	
Islington	3d—2¾d	¾d	Sliding scale.
Kensington	4½d	1d.	
London Electric Supply	5d—2½d	2d—1½d	Sliding scale.
Metropolitan Electric Supply	5d—2½d	..	Ditto.
Notting Hill	4½d	1d.	
Poplar	3d	Fixed charge +½d+50%.	
St. James	4d—3d	¾d	Sliding scale.
St. Marylebone	3½d	¾d.	
St. Pancras	3d—2d	½d	Sliding scale.
Shoreditch	5d—2d	1d	Block tariff.
South London	5d	1¾d—1d	Sliding scale.
South Metropolitan	5d	1½d.	
Southwark	4d	2d—¾d	Sliding scale.
Stepney	4d—½d	4d—½d	Block tariff.
Stock Newington	4½d	1d.	
Westminster	4½d—4d	½d	Sliding scale.
Woolwich	6d	1d.	

Figures taken from the "Electrician Annual Tables of Electricity Undertakings," 1933 Edition.

Mr. NARENDRA KUMAR BASU: Is there an agreement between Government and the Electric Supply Corporation by which Government buildings in Calcutta are charged at the rate of 1·8 annas per unit for lights and fans?

The Hon'ble Mr. J. A. WOODHEAD: I do not know. I must ask for notice.

Mr. NARENDRA KUMAR BASU: Have the Government received any information on the point that there is a difference between the charge for Government buildings and private buildings including hospitals and schools and colleges?

The Hon'ble Mr. J. A. WOODHEAD: Personally I do not know. I must ask for notice.

Mr. NARENDRA KUMAR BASU: Is the Hon'ble Member aware that under the Electricity Act it is not permitted to the Corporation to charge different rates?

The Hon'ble Mr. J. A. WOODHEAD: No, I am not aware of that.

Mr. NARENDRA KUMAR BASU: Will the Hon'ble Member pleased to look into the matter?

The Hon'ble Mr. J. A. WOODHEAD: Yes, Sir.

Mr. NARENDRA KUMAR BASU: Has an Advisory Board for Bengal been formed under the Electricity Act?

The Hon'ble Mr. J. A. WOODHEAD: No, not so far as I am aware.

Mr. NARENDRA KUMAR BASU: Will the Hon'ble Member be pleased to consider the advisability of having an Advisory Board for Bengal?

The Hon'ble Mr. J. A. WOODHEAD: I must admit I am ignorant whether the Act provides for an Advisory Board of the nature apparently contemplated by Mr. Basu.

Irrigation societies in the Bankura district.

*102. **Babu SATYA KINKAR SAHANA:** (*a*) Will the Hon'ble Minister in charge of the Irrigation Department be pleased to state what pecuniary help, if any, the Government have been rendering to the irrigation societies in the Bankura district?

(*b*) Will the Hon'ble Minister be pleased to lay on the table a statement showing—

(*i*) the number of irrigation societies in the Bankura district;

(*ii*) the number of members of those societies;

(*iii*) the area irrigated through them;

(*iv*) the crops raised in the area irrigated through them; and

(*v*) the approximate value of the crops raised per year?

MINISTER in charge of PUBLIC WORKS DEPARTMENT (the Hon'ble Nawab K. G. M. Farequi, Khan Bahadur): (*a*) A statement is laid on the table.

(*b*) (*i*) 345.

(*ii*) 9,824.

(*iii*) 65,909 bighas.

(*iv*) Mainly paddy. Sugarcane, wheat, mustard and potatoes are also grown in small quantities.

(*v*) Rupees 5,75,000.

Statement referred to in the reply to starred question No. 102 (a).

About Rs. 9,000 a year for Co-operative Department staff for supervision of irrigation societies, and about Rs. 42 a year for efficient account-keeping of backward societies.

Expenditure on Salbund Project.

On construction—

		Rs.
Loan by Government	...	36,000
Paid by the Society	...	10,377
Paid by Government	...	3,911
Total expenditure	...	50,288

On maintenance and repairs—

Expended by Government	...	3,344
Total	...	53,632

Expenditure on Panchmuri (Amjore) Project.

Paid by Government—

		Rs.
On construction	...	44,928
On maintenance and repairs	...	10,321
Total	...	55,249

against which the society paid Rs. 12,000 as capitalised cost of maintenance.

Babu SATYA KINKAR SAHANA: From what time the Hon'ble Minister of Agriculture has taken charge of the Irrigation Department?

The Hon'ble Nawab K. G. M. FAROQUI, Khan Bahadur: These societies are run by the Co-operative Department. That is why I have taken upon myself the responsibility of replying.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Economic Enquiry Board.

46. Maulvi ABDUL HAKIM: (*a*) Will the Hon'ble Member in charge of the Commerce Department be pleased to state whether a representation sent by the Secretary of the Nikhil Bengal Proja Samity on the 5th December, 1933, was received by Mr. R. N. Gilchrist, Joint Secretary to the Government of Bengal, asking for a proper representation of agriculturists on the Economic Enquiry Board inaugurated by resolution No. 6159 (Commerce) of the 1st December, 1933?

(*b*) If the answer to (*a*) is in the affirmative, what action, if any, has been taken by the Government on such representation?

(*c*) Did the Government consider the position of the agriculturists on the question of the economic condition of the province?

(*d*) If the reply to (*c*) is in the affirmative, will the Hon'ble Member be pleased to state why there are only two representatives of the agriculturists on the Board of twenty-one representatives?

(*e*) Are the Government considering the desirability of increasing the representation of the agriculturists on the aforesaid Board?

The Hon'ble Mr. J. A. WOODHEAD: (*a*) Several representations were received from this body.

(*b*) They were duly considered.

(*c*) Yes.

(*d*) and (*e*) In constituting the Committee Government considered it necessary to include representatives of all the chief economic interests in the province, and also officials and non-officials interested in economic problems. At the same time it was desirable to limit the size of the Committee to workable numbers. It was therefore impossible to provide more than two places specifically reserved for representatives of agricultural interests, and Government do not propose to increase this number.

Calcutta Port Commissioners' ferry service.

47. **Kazi EMDADUL HOQUE:** (*a*) Is the Hon'ble Member in charge of the Marine Department aware that the existing steamers of the Calcutta Port Commissioners' ferry service are in need of frequent urgent repairs?

(*b*) Has the attention of the Hon'ble Member been drawn to the frequent cancellation of the regular trips of the ferry service due to urgent repairs and the consequent inconvenience caused to the travelling public thereby?

(*c*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of urging the Port Commissioners to maintain extra adequate reserve steamers to ply during the repairs of the ferry steamers? If not, why not?

(*d*) Have the Government any information or could they obtain the information as to—

(*i*) how many times the ferry service steamers were taken away for repairs in the year 1933 and how many times the notice of the alteration of the time-table or cancellation of the regular trips were issued to the public during the same year; and

(*ii*) how many days during the year 1933 the "dredger" worked at the Sibpur ferry steamer ghat just by the side of the pontoon, thereby obstructing the traffic from getting into or down from the ferry steamers conveniently?

(*e*) Is the Hon'ble Member aware of the public complaints regarding the sudden and frequent cancellation of trips and alteration of the time-table in the Port Commissioners' ferry service?

(*f*) Are the Government aware that the closing down of the ferry service between Chandpal Ghat and Rajganj, including Sibpur, is under the immediate contemplation of the authorities of the Port Commissioners?

MEMBER in charge of MARINE DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*a*) No. Urgent repairs were only necessary on six occasions during 1933.

(*b*) No, but it is understood that trips have been cancelled owing to urgent repairs and other causes.

(*c*) It is understood that the Port Commissioners have already arranged to make greater use of the Howrah Bridge ferry steamers and that they will be able to maintain regular services in future.

(*d*) (*i*) Six times for urgent repairs and eight times for boiler cleaning.

Notices of changes were issued to the public on fifty-four different occasions, but such frequent changes will not be necessary in future.

(*ii*) Thirty-three, but little inconvenience was actually caused to the embarking and disembarking of passengers. If dredging were not done the station would have to be closed.

(*e*) The Port Commissioners received only three complaints during the year.

(*f*) No

Liquor license granted to the Hagenbeck Circus.

48. Maulvi MUHAMMAD FAZLULLAH: (*a*) Is the Hon'ble Minister in charge of the Excise Department aware—

(*i*) that a license was granted to the Hagenbeck Circus, permitting ladies to serve liquor;

(*ii*) that the said Circus was situated close to a mosque within the Park itself;

(*iii*) that the Mussalmans used to assemble for prayer in large numbers in the month of last *Ramjan* during the time of the performances?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Minister be pleased to state whether any inquiry was made by any responsible officer to ascertain the religious sentiments of the local Mussalmans?

(*c*) Had any such license been previously granted to any Circus party?

(*d*) If the answer to (*c*) is in the negative, what was the special ground for granting a special license to a Circus party in a pre-eminently Muhammadan quarter, close to a mosque?

MINISTER in charge of EXCISE DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (*a*) (*i*) A temporary bar license for 19 days from 3rd to 21st January, 1934, was granted to one Mr. T. Vigano, caterer to the Hagenbeck Circus. The licensee was permitted to employ his wife and her cousin as saleswomen in the said bar.

(*ii*) The Circus compound was situated in the eastern portion of the Park in an enclosure. The mosque was at a distance of about 180 yards from the outer boundary of the Circus enclosure. The bar was not visible from the mosque.

(*iii*) Yes.

(*b*) No. Inquiries are not made as a rule in the case of temporary licenses unless any objection is received. No objection was received in this case. The license was issued on production of a certificate from the Commissioner of Police, as is usually done when temporary licenses are granted.

(*c*) No, as no such application had been received before.

(*d*) There was a *bonâ fide* demand for such a license as Europeans and Anglo-Indians visited this Circus in large numbers.

Calcutta Madrasah.

49. Mr. A. RAHEEM: (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to lay on the table a statement showing—

(*i*) the total amount paid to the Calcutta Madrasah from the Mohsin Fund annually;

(*ii*) the amount paid to the Arabic Department of the Calcutta Madrasah from the Mohsin Fund annually;

(*iii*) the present total number of students in the Arabic Department of the Calcutta Madrasah; and

(*iv*) the present number of *Shia* students in the Arabic Department of the Calcutta Madrasah?

(*b*) Is there any restriction for the *Shia* students to enter in the Arabic Department of the Calcutta Madrasah?

(*c*) Is it a fact that the *Shia* students are asked by the Madrasah authorities to declare themselves to be of "*Sunni*" sect, before they are admitted into the Arabic Department of the Calcutta Madrasah?

The Hon'ble Mr. KHWAJA NAZIMUDDIN: (*a*) (*i*) Rupees 1,620 for scholarships only.

(*ii*) Rupees 1,176 for scholarships only.

(*iii*) 511.

(*iv*) Nil.

(*b*) No; on the contrary special provision for *Shia* students has been made in the syllabus of studies.

(*c*) No.

LEGISLATIVE BUSINESS

GOVERNMENT BILL

The Bengal Criminal Law Amendment Bill, 1934.

Clause 4.

Mr. PRESIDENT: We get back to the Bengal Criminal Law (Amendment) Bill, 1934. The House was discussing, when we adjourned last night, the amendment of Mr. Narendra Kumar Basu.

(Kazi Emdadul Hoque, who was in possession of the House the previous day, resumed his speech.)

Kazi EMDADUL HOQUE: Sir, last night I was telling the House that I was as anxious to fight terrorism as any members of the Government Bench, for I consider that this terrorism does not contribute to the growth of nationalism in India, but it positively retards it, and then I differed from the Government as regards the method by which this evil should be wiped out of the country. Government want to drive it out wholesale by means of ordinances and repressive measures which they have brought before the House from time to time.

Mr. PRESIDENT: I must ask you to confine your remarks to the motion now before the House.

Kazi EMDADUL HOQUE: I was coming to that, Sir,

Mr. PRESIDENT: I do not think so.

Kazi EMDADUL HOQUE: There was an opportunity yesterday of discussing the general policy when the motion for recommittal of the Bill and the motions for taking the Bill into consideration were before the House.

Mr. PRESIDENT: Yes, the scope was much wider than it is to-day.

Kazi EMDADUL HOQUE: I submit, Sir, that I was trying to suggest that if the Government is to run on different lines then there would be no necessity for bringing in a measure like this.

Mr. PRESIDENT: That is a different thing. To-day, you are supposed to confine your remarks to the motion before the House.

Kazi EMDADUL HOQUE: The clause provides death penalty in certain cases in order to kill terrorism out of the country. My submission is this: that this punishment should not be given in a spirit of retaliation, but it should be given in a spirit of rectification. Human life after all is a very precious thing and it should not be treated lightly. Sir, the late Sir Surendra Nath Banerjea used to be looked upon in the same light as many of the terrorists are now looked upon, but after a time he became the greatest champion of Government. Who knows that these human beings—if their precious lives are not taken away in this way—will not turn out to be friends of Government in future!

Sir, Reverend B. A. Nag was telling yesterday that there was no cause of apprehension if the Bill were passed into law.

Mr. PRESIDENT: He did not speak on this motion so far as I remember. You should not reopen a debate that was closed.

Kazi EMDADUL HOQUE: Our difficulty is this: when Government start a measure like this, there is the fear that many innocent persons may be held up under this clause and may be put to considerable trouble. Therefore, we cannot give our support for the death sentence. I, therefore, support Mr. Basu's amendment.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, while all over the world enlightened public opinion is becoming more and more pronounced and insistent for the abolition of the death penalty, it is surprising that the Government of Bengal should ask for the vote of this House to provide death penalty for certain undefined and undefinable offences.

The Government also forget the general sentiments of the people of Bengal against taking of human lives under any excuse whatsoever. We are as a race opposed to killing of any kind even under judicial sanction. You want us to approve of killing under certain circumstances and thereby change our whole outlook on human lives and of human values, not to speak of our traditional views on the sanctity of human lives.

I would ask the Hon'ble Member to pause and consider the consequences which may follow such a complete metamorphosis of our mental outlook. You will probably say this is a mere sentimental ground, but will not the Hon'ble Member be treading on very dangerous grounds if he bids adieu to all sentiments including those which bind us to the Britishers? I may say that it is sentiment, especially the moral sentiment in us, which is the most solid basis of an orderly

Government and of our relation with Britain. Remove it and law loses its main sanction and main strength. Why are the hands of law paralysed in time of revolution? Because this sentiment about the sanctity of human lives is undermined by various causes. We Indians, and we Hindus especially, are constitutionally averse to killing even for a kingdom. In India only it was possible for a warrior of the stamp of Arjun in the battlefield Kurukshetra to give way to this noblest of human sentiments until it required all the philosophy of a Srikrishna to conquer that sentiment. To-day, centuries after, the same doctrine is being preached by another son of India. He is preaching non-violence from one end of the country to the other. This is indicative of the abhorrence of taking human life that is inherent in us. If you really want to kill terrorism, you should not have put forward arguments like this. You should have told us—You Indians have always held human lives sacred, how is it that you encourage and sympathise with terrorism? That one argument would have held good. It would have gone much further than any other arguments, because we have never taken human lives to gain political ends. With other nations it may have been so, but it cannot be said that the Indians have taken lives in order to gain political ends. Perhaps such an appeal would have no effect in other countries, but here in India such an appeal would go very deep into our hearts. Therefore, I object to the provision in this Bill for death penalty under any circumstances, and I shall presently show that some of these circumstances are very trivial circumstances indeed. But Sir, the Hon'ble Member wants to kill this spirit in us. I hope he has not reckoned with the costs, or else he would not have done so. If it were on this ground alone I would have opposed this clause of this Bill.

But there are practical considerations as well. Mr. N. K. Basu has assured us that no Judge trained on the lines of the English system of jurisprudence would inflict death penalty. While one may mainly agree with him, a *mufassal* lawyer like myself who works in an atmosphere far different from the atmosphere of the High Court, may be excused if he is unwilling to place too much confidence either in the ability or the independence of all our Judges and is, therefore, unwilling to take risks of such a nature. I consider that there may be real risks in some cases, in spite of the supervision of the High Court, as there are in many cases of ordinary offences with death penalty. Then consider the wording of the clause "circumstances indicating"—words which are not to be found in any provision of any law. It does away with all rules of evidence regarding proof. All that is necessary is that it "indicate" to the particular Judge with a particular bent of mind. If there is such an indication, a conscientious Judge may feel bound to inflict the death penalty and yet to other minds the indication may be quite different.

One who is conversant with the main distinction between section 302 and section 304 of the Indian Penal Code cannot fail to be struck with the solicitude felt by the framers of the Code to confine death penalty to the clearest cases of intention to commit murder. Here the line of demarcation is completely obliterated. All caution is given the go-bye and a wide field is thrown open to the Judge to ride in any direction he likes.

To the argument that the death penalty is only meant as a threat, my reply is while it involves risks, very grave risks, if in practical working it is found impossible to inflict death penalty, in any case then the threat will lose all its force and the main purpose will be lost.

Sir, I belong to that weaker section of the people who believe in obeying the law and enforcing the law once it is enacted. That is a view which is quite the opposite of the view of the people who would wield the weapon of civil disobedience of laws for political progress. I, therefore, feel it the more incumbent to oppose the enactment of laws which will give a fillip to or an encouragement of the movement of civil disobedience.

Therefore, on the grounds of humanity and of sentiment, as well as for practical reasons, I oppose this clause and appeal to every member of the House who do not want to bring the Government into contempt and hatred and who has any love for the British system of jurisprudence and is opposed to the law of tooth for tooth and eye for eye to oppose this provision. I ask every member of the House not to betray the culture, not to betray our civilization which is our privilege and our birth-right, specially in a case like this. I am sure this Bill will touch the heart of every Hindu and every Muhammadan in this House to whom religion is something more than politics and to whom human lives are more valuable than anything else.

With these words, I strongly support Mr. Basu's amendment.

Khan Sahib Maulvi MOHAMMED BASIR UDDIN. Sir, I oppose Mr. Narendra Kumar Basu's amendment. I say that the death sentence ought not to have been provided in the Bill, but very drastic crimes require drastic measures. Moreover, it is intended to act as a deterrent when we take into consideration how innocent lives are being murdered by the terrorists and how families of the murdered persons are left helpless. I think that the culprit ought to be summarily tried and sentenced to death. (A voice: "Martial law?") But in this case there is a safeguard provided in the Act. Under the Act the culprit is going to be tried by Commissioners appointed by the Act, and we are convinced that there will be no miscarriage of justice. Sir, we have been told that Government should take the people into their confidence and then there would be an end of terrorism, but so far as I know in several

districts vigilant committees have been formed to give information about terrorists. May I ask how many of the Chittagong people supply information about the absconding Armoury Raid accused?

Sir, Mr. Nag gave a very convincing speech yesterday, but Mr. Basu said that he being a nominated member his views need not be taken into consideration.

Mr. PRESIDENT: You need not go into that. I have already ruled that the remarks of the members must be confined to the motion before the House. Keep closely to that ruling please.

Khan Sahib Maulvi MOHAMMED BASIR UDDIN: Sir, I myself am an elected member and I do support——.

Mr. PRESIDENT: Can't you skip over that portion of your manuscript? (Laughter.)

Khan Sahib Maulvi MOHAMMED BASIR UDDIN: My view is this: that death sentence should be provided in this Bill and by that way terrorism will go away from this province.

Maulvi ABDUS SAMAD: Mr. President, Sir, I rise to give my wholehearted support to the amendment moved by Mr. N. K. Basu. Death penalty is provided for the possession of firearms with the object of preventing the smuggling of arms. The existing law provides a sentence of transportation for life. It has been raised to death in the hope that it will strike terror into the heart of the smugglers and those in possession of firearms with an ulterior object. Knowing human nature as we do, I think this provision of death penalty will not produce any effect whatsoever. Under the Penal Code, the highest punishment is provided for offence of dacoity with murder, but still we see, Sir, that dacoity with murder is being committed as usual. The provision of death penalty has no effect upon dacoits The same thing will happen with those who smuggle arms; they are actuated by the same motive, namely, want and hunger; and they go on committing the offence even knowing the consequences of their action. Sir, I would have given this death penalty my wholehearted support if I could be convinced that the situation is really so very menacing that without the provision of this death penalty, the position will not be improved. The Hon'ble Home Member made a statement in this House from which we all learnt that excepting two stray cases at Midnapore and Chittagong, there has been no political murders during the last two years. That shows that the terrorist movement is brought well under control and, though these cases are very unfortunate, that does not show that the situation is menacing. What is really wanted, Sir, is not the promulgation of

stringent measures like this, but the increase of the efficiency of the detective capacity of the police. Instead of increasing the efficiency, we see that the police strength is numerically increased daily and, consequently, there is an increased expenditure under the head "Police" without the corresponding increase in the efficiency of the police administration. The case of the tragic murder of Mr. Burge and the latest incident at Chittagong do not reflect any credit upon the administration of police in Bengal. Therefore, my opinion is that this provision of death penalty is not only superfluous under the circumstances of the case, but it is also provokingly insulting to the sense of honour and prestige of the Indian community. There is another aspect of the question to which I would draw the serious attention of the elected non-official members. What will be the effect which will be produced in the minds of the British public if this provision of death sentence and other provisions of this Bill are passed by a majority of the elected members of this House. They will think that smuggling is carried on on such an extensive scale in Bengal that it is within the reach of anyone to get it and that the Government is faced with a revolution of a great magnitude and that political murders and political dacoities are the order of the day. They will also think that the Indian press is permitted to publish information which discriminates sedition and disloyalty. This will be the impression, and the effect will be that it will strengthen the hands of the British diehards who, we all know, are making strenuous efforts to whittle down the recommendations of the White Paper. They will also say that here is a measure passed by the support of the majority of the elected members and that they would not have done this unless the situation is really grave and revolution is imminent. They are already agitating against the transference of law and order to the future Ministers of the new constitution in Bengal on the ground that they are not fit to be entrusted with the same. If we pass this measure, it will give a handle to the opponents of India's freedom. I hope that all these circumstances would be taken into consideration by the members of this House before they decide to oppose this amendment.

Mr. SHANTI SHEKHARESWAR RAY: Mr. President, Sir, I support the amendment moved by Mr. N. K. Basu. I submit that this is rather a minor point in the Bill. I do not know what the Government expect to get by the provision they have made about this death sentence. It may be argued that the provision is there as a deterrent punishment. I would have placed before the Government and the House whether in asking for a deterrent punishment they should abandon all civilised ideas: we can understand the anxiety of Government to crush terrorism; we can understand their attitude in seeking for a deterrent punishment, but is it necessary to go beyond what finds approval in this country? If you are not to be guided by the civilised

standards of punishment, you may as well copy or go back to sentences that were inflicted centuries ago. In that case the sentences of death carried out by hanging may not be the last word: why do you stop at that: why don't you go to other forms of death—death by torture. You may as well provide that the sentence of death will not be carried out by hanging but that the condemned man should be done to death by being thrown over to wild dogs or tigers or even to be trampled by wild elephants; or you may invent further forms of torture that may have the effect of striking terror into the minds of wouldbe culprits. Sir, thinking over the matter, I feel the policy that inspires Government in providing sentence of death in this clause is more or less at par with the mentality that prevailed when sentence of death was carried, not in the present way, but in the way that I have mentioned just now. In India we have been familiar with those methods, and they will not be new methods, but with the advent of the British in this country we have come to look upon such methods with disgust and abhorrence. Well, Sir, is it necessary to forfeit that respect that inspires our countrymen in the British nation. Do you like to be compared with the savages that are still living in this world? Those who kill their enemies and finish their task by eating up their enemies. Sir, judging from this point of view, I would ask Government to reconsider their decision. I know full well that this death sentence will not affect many persons, and I also realise that there are many checks before a sentence of death is carried out. I know there are the revisionary powers of the High Court. That is all right. Perhaps in practice this death sentence will mean nothing; that is, why I call this a minor point in this Bill. I also know that there will be circumstances under which the possession of firearms ought to be really punished by death, but in such cases the existing law is quite sufficient. There is sentence of death provided in case of abetment of murder and so there can be no question of miscarriage of justice and the law will have its dues in all cases. Then why should you condemn yourself by making such a provision?

There is another point. It is stated that this sentence will be inflicted in cases tried by the special tribunal and that will make us to be more careful as we know how trials are conducted before the special tribunal. There the ordinary law of the land is not followed, and to meet the special circumstances special procedure is followed and even in this Bill you remove many salutary checks. In that case a trial before that special tribunal will always be looked upon with a certain amount of suspicion in the minds of the accused, and in the minds of the friends of the accused and relations. There will always be a sense that they are not getting or will not get justice. If a death sentence is pronounced by such tribunals and is carried out, there will be no remedy in future. Other sentences may be modified if there has been

a miscarriage of justice and, Sir, it is well known that even in the High Court and other courts, now and then, miscarriage of justice happens. In taking the life of a person under the sentence of a special tribunal, if such a miscarriage of justice happens, there will be no remedy in future. In asking us to give our sanction to such a sentence, the Government calls upon us to shoulder a great responsibility and I submit it is not fair. (A VOICE: "Why?") Well, Sir, sometimes it happens that one inflicts death sentence on the spur of the moment. For instance, sometimes we read in the newspapers that when a suspect is apprehended or on the point of apprehension he tries to escape. He is shot dead. Well, Sir, in that case things are accepted as a matter of course and the death sentence is carried out by the men then and there. He has to judge on the spur of the moment that perhaps this is the most urgent work. For that reason even if he makes an error of judgment he is not taken to task. But in such cases where you intend to inflict a sentence of death by a show of trial you ought to be very careful. You should not throw undue responsibility on our heads as well as on the heads of the trying officers of Government. I hope, Sir, the Government will examine all these points of view and see to our request to drop the clause and, if that is not possible, at any rate the extreme penalty of death.

Mr. J. N. GUPTA: Anxious as I am to support Government in every legitimate measure, in obtaining every new power that might be considered necessary to deal with this extremely difficult task of suppressing terrorism in this province, and averse as I am to allow sentimental feelings to weigh in favour of those who seek to take the lives of innocent men, in preference to my sympathy being on the side of those unfortunate victims who are assassinated in secret without any chance of any defence being put up by them, yet after careful consideration of the various issues which are involved in passing a legislative measure of this kind I have come to the deliberate conclusion that it would be better if Government were to drop this particular clause of the amending Bill. It might be pointed out by the Hon'ble Home Member that this clause provides, besides the sentence of death, for other forms of punishment also, namely, that of transportation, and various terms of imprisonment as already provided under the law as it now stands, and that, therefore, this extreme penalty of death will only be inflicted in very rare and exasperating cases, and in fact, probably, may not be used at all. While, Sir, it is possible to maintain that very rare use will be made of this provision of death penalty, it may also be argued that such a proviso will act as a powerful deterrent by holding up before the eyes of these misguided young men who are probably about to cross the bar, the punishment of death and thereby it might stop some of them from taking the final step before it is too late. But, Sir, we cannot forget that we have repeatedly found that the terrorist,

these unfortunate young men and unfortunate young women who commit these crimes, have very little fear of losing their lives. As a matter of fact, most of them enter the arena of terrorism with their lives in their hands. We have repeatedly found that they do not seem to be the least concerned when they commit these crimes, whether they lost their lives as a consequence of their actions. That being the case, we are now to consider if you are not able to deter men from entering the ranks of terrorists, by this means whether by providing this extreme penalty of the law for the mere possession of firearms under incriminating circumstances without any overt acts you will not be shocking civilised sentiment not only in this province, shocking unbiassed public opinion not only in this province and throughout India, but throughout the civilised world, the repercussions of which, as was pointed out by one of the previous speakers, might find an echo even in England, and might be taken advantage of by the enemies of India's progress as a proof that in Bengal things have come to such a desperate pass that it has become necessary to pass a measure of this nature. Sir, I maintain that moral and physiological loss which the Government and the people of this province will sustain by the passing of this clause, will far outweigh any very problematic advantage which the Government might gain by arming themselves with this fresh power. There is also the great danger of providing the death penalty for an offence which will have to be judged not from any overt acts of the offender but only from circumstances indicating that he intended that such firearms should be used for the commission of any of these offences. It is hardly necessary for me to point out that it is the most difficult thing of all as we have all felt who have had any experience of judicial work either in the capacity of a Magistrate or a Judge to know exactly what the intention of a particular person was at any particular moment; and if there is the least mistake either in the production of the evidence or in the appraising of that evidence by the person sitting in judgment, the consequences may be disastrous. Imagine, Sir, how awful the consequence will be when perhaps an innocent man is sentenced to death. For all these reasons, I would humbly urge that as the Government have already very wide powers provided under the existing law, even of transportation for life for such offences. It is hardly necessary to take any fresh power. Sir, the danger of shocking impartial opinion everywhere is so great, and the physiological loss of alienating sympathy from our side, and from the side of those who are working to suppress this movement, to the side of those who are being unfortunately led into these dangerous paths, will be so great that I would ask the Government to consider whether it would not be wiser for them to say that after carefully considering the views that have been expressed on the floor of this House and also of the public outside this House, they have decided not to press for this clause.

Mr. W. L. ARMSTRONG: One might be regarded as a brave man who would dare to rise after the earnest appeal of Mr. Ray. On the other hand, it might be regarded as folly on my part if I venture to contest an established point of law of no less an advocate than Mr. N. K. Basu. I have no intention of doing so, but Sir, if you will permit me the right to draw a conclusion from his exposition yesterday, I will tell you what the effect will be if this clause 4 is omitted.

Mr. Basu is much disturbed by the words "under circumstances indicating that the offender intended to use such firearm for the commission of any offence of murder." On the other hand, I understand that Mr. Basu is perfectly satisfied with the composition of the commission appointed and that there would be a Judge, and as his opinion is that no Judge or set of Judges in this country—or in England I think he mentioned—no set of Judges in this country would award the death penalty if these words were inserted; then in that case there is no cause for alarm, and if Mr. Basu is right, then the death penalty would never be applied. I do not know if Mr. Basu is authorised to state that no Judge in this country, but assuming that he is right, then the terrorist would have nothing to fear; as a matter of fact, we all hope that the situation will be such that it need never be applied. This is a deterrent law, and it is only intended to deal really with those desperados which Dr. Amulya Ratan Ghose described yesterday. He described the terrorist as a desperado out to kill and be killed. Well, as far as they are concerned, this clause might expedite their suicidal tendencies; on the other hand, it might give a check to their criminal dealings with others. I do not see for all the reasons that have been put up that those who are innocent have anything to fear about it. There will be that tribunal and the words "under the circumstances," I take it, will be taken into consideration. We have heard this Government chastised time and again about the number of temporary measures which they have brought in to deal with terrorism. We have also heard the statement that terrorism has not been abolished. Well, terrorism is what has been described in this Council. It is a very difficult matter to destroy an underground thing like terrorism which simply sprouts out at times. This Government has been described as tyrannical and panicky. If this Government had been tyrannical and panicky it would not have come to us stage by stage and presented measures to us to be decided in the hope that that measure would be sufficient to deal with the condition then existing. A tyrannical Government would have insisted on going the whole hog to deal with the matter then and there, but they have not done that. This is a considerate Government. When we look at the Government Benches, we can imagine the Hon'ble Mr. Reid with his sash and buckler and the Hon'ble Mr. Woodhead having no other object in view than making out as much as he possibly

could in his budget. Look at the Government members, their temperament is as calm as the mid-summer days. It has often been said that a legislature like this does not exist anywhere in the world. I am not going to pose as an expert of penal laws of other countries, but we can glean from the penal laws of other countries as to how they deal with terrorism. To deal with a menace like terrorism, especially aimed at officers belonging to the very Government which has to bring in this temporary measure, I know of no other Government so calm and so considerate to its people as the Government of this province.

Dr. AMULYA RATAN GHOSE: Sir, in supporting the motion of Mr. Narendra Kumar Basu I should like to say that this clause should be omitted. The reasons for its omission have been very ably put forward by the previous speakers and to them I would add only a few words. I have heard the Khan Sahib stating that drastic crimes require drastic measures. But this clause does not mean that for drastic crimes this drastic measure is going to be enacted. This clause intends that before a crime is actually committed the person committing the crime should be considered a criminal and dealt with as severely as one who is actually guilty of committing the crime of murder. That is the difference. We all agree that drastic crimes require drastic measures, but we cannot agree that a crime before it is actually committed should be treated in the same way as a criminal is treated. It has been said that this clause is necessary as a deterrent measure, but a deterrent measure means a measure which, if enacted, will deter persons from committing the crime of murder and other crimes, and I would ask those who support the retention of this clause if they really believe that its retention will actually deter such people who in a temporary fit go out with a revolver or pistol or a deadly weapon to kill a person. I very much doubt that this clause if retained will actually deter persons from committing any act which this clause seeks to prevent. The sentence of death is considered deterrent, but so long there were sentences ranging up to transportation for life and that had not had any deterrent effect upon persons who want to defy law, and the intentions of Government. Well, Sir, if that has failed to have any deterrent effect upon those persons, I do not understand by any stretch of imagination that this clause will have a deterrent effect. Did not the terrorists know that by killing a man they would be hanged or transported for life or for aiding or abetting a man to commit a murder they will be sentenced to death? I say that if those things had no deterrent effect, the reasons shown that this measure will have a deterrent effect on the terrorists are entirely fallacious. The only thing that can prevent these crimes is to to stop the tyrannical activities, the atrocious activities of the keepers of law and order. I would ask those persons who are anxious to prevent terrorism to read and re-read the

statement of Miss Bina Das. If they read her statement and consider under what circumstances she became a terrorist, they will come to know how to prevent terrorism. Unless a proper diagnosis is made of the root causes of a certain disease, the treatment can never be successful. The diagnosis can very well be made from the statements of those terrorists and persons who have actually been guilty of terrorism, and from their statements one will find the cause why they took that hazardous action, why they became so desperate and why they broke the law. If their grievances and the causes for having resorted to those dangerous ways of remedying their grievances are tackled in a fairer and more reasonable way, I think that will be really deterrent. Otherwise, these measures will have no deterrent effect on those people. I also think along with my colleagues here in this Council that the days of tooth for a tooth and eye for an eye have gone. To punish a man who has the intention to murder with sentence of death is rather going even worse than tooth for a tooth and eye for an eye. The meaning of the clause is that a person who has not yet actually taken out the tooth of another person should have his tooth extracted first. If a person has not actually taken out the eye of another person but simply thinks that the eye should be taken out, Government thinks fit that his eye should be extracted first. If a man thinks of killing a person, although he has not actually killed him, Government wants that because he has thought of killing, his head should be severed from the body. That is the sort of legislation that is going to be enacted. I have not heard of a more absurd thing than this, and I wonder if this absurd thing will be passed by the House. I am surprised that very prominent members of this Council are absent to-day and we are deprived pleasure of hearing some valuable speeches either for or against this motion. However, Government have got a supporter from the elected group in Khan Sahib Basir Uddin, and although elected he is a Khan Sahib. With these words I support the amendment of Mr. Basu.

The Hon'ble Mr. R. N. REID: Much as I respect the arguments which are based on sentiment and the respect for human life I must submit that to use those arguments in connection with this clause of the Bill is to draw a red herring across the trail. The trail which we are pursuing to-day is whether the death sentence should be inflicted in certain cases where murder is intended and where the persons accused are members of the terrorist conspiracy. Here I would say that it seems to me singularly inappropriate to talk seriously about the sanctity of human life when we are dealing with such men as the terrorists. Did they think of the sanctity of human life—those men who murdered Kamakshaya Prasad Sen in his bed in Dacca, a Sub-Deputy Magistrate, whose only crime in their opinion was that he did his duty in

carrying out the law against civil disobedience offenders? Was there any thought of the sanctity of human life when that band of ruffians surrounded the Pahartali Institute two years ago and threw their bombs and fired their guns into it on a crowd of innocent and unarmed men and women? Was there any thought of the sanctity of human life when those men butchered Mr. Burge when he was playing football in pursuance of a definite policy of attempting to get on friendly terms with the people of his district? There was none. I would submit that to argue on these lines and to quote the Indian Penal Code and the number of cases in which the Penal Code allows the sentence of death is to ignore the background on which this legislation has been brought forward. That background, Sir, is the background of terrorism. There was no such background of terrorism in 1860 when the Penal Code became law. If there had been such a background then, I have no doubt that the Penal Code would have contained a clause to meet it. Then, Sir, the old argument which we heard so often before has been brought forward about the desperate nature of the men whom we are dealing with and the futility of any attempt to deter them from their desperate acts. We have heard again of the men who go about with pistol in one hand and a phial of cyanide of potassium in the other. Well, Sir, it is true that there are such men, but I am glad to say that they are not very numerous. I can remember for the moment only three cases where men were found with poison in their hands in the act of committing an outrage. One of them was those of the men who took part in the Writers' Buildings outrage in December 1930; another was the miscreant who shot Mr. Garlick when he was sitting in his court at Alipore; and the third one —a girl who was found dead at Pahartali while her male friends had all run away. Besides these there are not very many cases that I know of. So it seems to me that there is a very good chance that the fact that this capital penalty lies in the background may be a deterrent to somebody, who is perhaps gone no farther than to be on the border-line of committing some terrorist crime.

Then, again, it is said that this clause if passed into law will never be enforced and that no Judge and no tribunal will ever pass such a sentence. Sir, if the prophets can say that that is so and they are correct, then they can say "I told you so" and nobody is any the worse. But I do feel, Sir, that there is a chance that this penalty may act as a deterrent. It may prevent some youth from bringing shame upon his parent's head, from bringing shame on his country by committing some hideous crime. It may prevent them from doing that and if so that is at least worth while attempting.

There is just one other point which I would like to mention and which I hope will clear up a misapprehension which I believe exists in the minds of some members in this House and that is that the ordinary

safeguards and privileges which attach to the position of a person who is under sentence of death will also attach to anyone who may be convicted under this clause if it becomes law. All the ordinary privileges and rights of a condemned person will naturally attach to anyone who is so condemned by the tribunal. He has first got to be condemned by the court; if condemned to death, the High Court has to confirm that sentence and it is also open to him to appeal to the High Court. It is also open to him, supposing such an appeal is dismissed, to petition for mercy to the Governor and the Viceroy, and it is the practice in jails to ask a man under those circumstances if he wishes to petition the Governor or the Viceroy.

There was one point which Mr. J. N. Basu raised and, if I understood him aright, he found it difficult to understand why it is that this penalty of death was not merely added to the clause in the Indian Arms Act as it stood before, namely, in sections 19A and 20, instead of putting in all this stuff about intent to commit a murder and making it triable by a special tribunal. I may say that the only point in doing so is to restrict the effect of this clause to persons who belong to a terrorist conspiracy and who are out to commit murder; nothing more. It was not intended to make this clause applicable to ordinary persons not concerned in terrorism who are caught in the act of carrying arms in contravention of the Indian Arms Act. I have nothing more to add to the discussion except to say that I trust the House will support me in opposing this amendment to omit clause 4.

Mr. Narendra Kumar Basu's motion that clause 4 be omitted was then put and a division taken with the following result:

AYES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Bakth, Maulvi Syed Majid.
Banerji, Mr. P.
Barman, Babu Premhari.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Babu Kishori Mohan.
Chowdhury, Maulvi Abdul Ghani.
Chowdhury, Maulvi Nurul Absar.
Dutt, Rai Bahadur Dr. Haridhan.
F Haqish, Maulvi Muhammad.
Ghosh, Dr. Amulya Ratan.
Gupta, Mr. J. N.
Haque, Kazi Emdadul.
Karim, Maulvi Abdul.
Khan, Maulvi Tamizuddin.
Maiti, Mr. R.
Momin, Khan Bahadur Muhammad Abdul.
Poddar, Seth Hanuman Prasad.
Quasem, Maulvi Abul.
Rahman, Maulvi Aziz.
Rai Mahasai, Manindra Deb.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Roul, Babu Nagendra.
Ray Choudhuri, Babu Nagendra Chandra.
Samad, Maulvi Abdus.

NOES.

Ahmi, Nawabzada Khwaja Muhammad, Khan Bahadur.
Armstrong, Mr. W. L.
Ashworth, Mr. G. G.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Bazlurrahim, Khan Sahib Maulvi Muhammad.
Birtwistle, Mr. H.
Bollomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Hafizur Rahman
Cohen, Mr. D. J.

Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. H. G. A.
Essadji, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dilduar.
Gilchrist, Mr. R. R.
Gladding, Mr. D.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Kasem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Mr. Razaur Rahman.
Law, Mr. Surendra Nath.
Maguire, Mr. L. T.
Martin, Mr. O. M.
Miller, Mr. G. G.
Mitter, Mr. S. C.
Mitra, Babu Sarat Chandra.
Mullick, Mr. Mukunda Behary.
Nag, Reverend R. A.
Nag, Babu Suk Lal.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. G. K.
Norton, Mr. H. R.
Raheem, Mr. A.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur.
Ray, Babu Khetter Mohan.
Ray Chowdhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Ross, Mr. J. R.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. N.
Sadullah, Maulvi Muhammad.
Sahana, Babu Satya Kinkar.
Sarker, Rai Bahadur Rohini Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. R. R.
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur.
Solaiman, Maulvi Muhammad.
Steven, Mr. J. W. R.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deG.
Woodhead, the Hon'ble Mr. J. A.

The Ayes being 28 and the Noes 68, the motion was lost.

(The Council was then adjourned for 15 minutes.)

(After adjournment.)

Babu SATISH CHANDRA RAY CHOWDHURY: Mr. President, Sir, I beg to move that in clause 4, in proposed section 20A, lines 4 to 6, the words and figures "or has any such firearms in his possession or under his control in contravention of the provisions of section 14 or section 15" be omitted.

Sir, they say that law is a leveller. We understood by this expression to mean that in the eye of law all persons are equal, rich and poor, high and lowly, all must share the consequences of their misdeeds and all must be brought under the clutches of the law. The law does not make any distinction between one offender and another because it does not distinguish between the different classes, but we are now called upon to understand this expression to mean——

Mr. PRESIDENT: Mr. Chowdhury, can you move your next amendment and make one speech?

Babu SATISH CHANDRA RAY CHOWDHURY: Very well, Sir. I beg to move that in clause 4, in proposed section 20A, line 4, after the words "the firearm" and before the words "in his possession" the word "knowingly" be inserted. The law is a leveller in a quite different

sense and has a far more wider sense, namely, whatever may be the nature of the offence the punishment is the same to all. Sir, whatever may be the stage from conception of commission of an offence the punishment is to be the same. The Christian preaching that even the eye of lust is to be uprooted is being revived. But nowadays we do not hear of that noble Christian doctrine that when the left cheek is beaten, the right cheek should be presented. That doctrine was at one time looked upon by the whole world in reverence and converted many scoundrels into perfect Christians. Those days are gone and we now hear of punishments and reprisals and retributions only. I say this very strongly. I wonder, Sir, what will be the next amendment of the criminal law; probably the next amendment, which we will live to see and for which certainly our co-operation will be sought, will be that if a man dreams he is about to commit a murder, he is to share the same fate as the man who has actually committed the murder. Otherwise, it passes one's comprehension how a man who has in his possession a firearm is to share the same fate as the man who deliberately goes out armed for the purpose of committing murder. Now it will be a very great practical blunder too; anyone who is conversant with the law and law courts must admit that there is a very great real danger too. The word "possession" has received interpretation from the highest court and that means in the criminal law a person who is owning a house is presumed to be in possession of all that is there. Now, Sir, suppose that in a certain case certain firearms are found in the house of a certain person, it does not prove that those firearms were under the actual control of any particular individual in that house; in that case the master of the house, however innocent he may be, has got to answer for the presence of the firearms in the house. It does not unoften happen, as a matter of fact, nowadays that the owner of a house is not aware of the actual conduct of the different persons who may be using the house. It has so often happened, I am using the word from the speech of a high official, that sons of Government servants are sometimes found guilty of terrorism and therefore it is to be presumed that their guardians exercise no control over the wards. Sir, it cannot be said by any stretch of imagination which can be conceived that officers who are in the pay of Government and who depend for their maintenance upon Government would be a willing party to their wards being used as tools of terrorists. It must be presumed that these gentlemen have no actual knowledge of the offence of their wards and that all that they can be charged with are carelessness and want of vigilance over their wards, but it is a long step thence to hold them responsible for being in possession of firearms which may be found within the precincts of their houses and at the same time provide death penalty. If in these circumstances the firearms that are discovered in a house cannot be connected with any particular individual, certainly somebody will have to be punished for that and the law courts putting their interpretation

on the word "possession" will certainly hold the owner of the house responsible for it, and add to this if with this firearm is also found a pencil-written note containing a bomb formula, which casual evidences sometimes forthcoming,—on the basis of that punishment will be given. There may also be some circumstances always indicating that the owner of a house really intended to commit murder because firearm has been discovered in his house and therefore he must have the same punishment as the man who deliberately goes out armed with a revolver for the commission of an offence. If there is to be no distinction between one class of offence and another that falls under the above general category, then nobody's life and property will be secure under this new system of law in which the level of the law has sunk to lawlessness. It is too shocking to contemplate that the real man who is constructively in possession of arms has got to pay for that with his own life just as the man who goes out armed with revolvers. That this penalty has found a place in this particular clause shows that the framers of this Bill were anxious for one purpose only, that is to say, to bring all and sundry into the net and give them the extreme penalty of the law and thereby create a sort of terror. Sir, we heard from the Hon'ble Member that Government is not prepared to listen to the argument of sentiment because in some cases the terrorists have paid no heed to this argument of sentiment and they have not respected the sanctity of life. It is a curious thing for the Government to try to compete with and outdo the terrorists in their own methods. It has been said, and well said, that a big empire with a little mind go ill together. If the outlook of Government is the suppression of terrorists, the only way to do that is the mobilisation of public opinion on the side of Government and no Government ever succeeded in suppressing terrorism until they mobilised public opinion on their side. Does the Hon'ble Member really think that this Bill will have the effect of mobilising public opinion on his side? Is this the way you want our co-operation? Are we to surrender our conscience—sacrifice our conscience? I say that you will not be able to realise the aim which you have before you in this way. I therefore appeal to the Hon'ble Member to consider this. I have been very cautious and have not included in the motion the other part which lays down that whoever goes armed with a pistol takes a serious risk. I can conceive of that; a man really takes the consequences of his own actions; he knows that if he goes out with a revolver with a particular intent, he must take the consequences. But a man may have no knowledge that firearms are concealed in his own house, even then he may have to pay a serious penalty. Have not the Hon'ble Judges of the High Court held that it will not do to punish all persons for the same offence in the same way? Have they not held as a matter of fact that these firearms have been planted sometimes by spies? I am not really charging any honest and sincere police officer with this, but are there not spies in this country? Do we not know

that a large part of this 52 lakhs of rupees provided for suppression of terrorists goes into their pockets? Take an instance, there is a neighbour's house about to be searched by the police; it has transpired in some cases that arms have actually been smuggled into another house, in order to evade the search. Is there not a possibility of innocent persons suffering if these distinctions are not kept in view, especially when the penalty is so severe? It is for this reason that I have not meddled with the other portion of the clause, that is, whoever goes armed, etc. But from the report of cases, and from our own experience we know that the two positions are quite different. The meaning of the law is probably not ordinarily understood. Therefore, it is incumbent on those who want to have this drastic measure to have the necessary safeguards and to see that innocent persons do not suffer. Are we in sympathy with terrorists, or terrorism? I say if you catch a terrorist red-handed, nobody will plead on his account. But we stand not for the terrorist but for the general population—for the ordinary citizen going about his business innocently; he must be protected. If you cannot protect them, you will create a situation which in respect of these cases, even up to this time, has never existed. For these reasons I appeal to the legal sense of the Hon'ble Member to accept this amendment and show to the House that they are alive to the situation. If they are not blind and they do not want our co-operation on any terms, then they must drop this clause.

As regards amendment No. 18, for the very same reasons, I want that the word "knowingly" will be inserted after the word "firearm," because it must be proved that the person in whose house the firearms are found had knowledge of their existence, and they must be saved from the technical interpretation of possession.

Babu HEM CHANDRA ROY CHOUDHURI: There is another motion (No. 36) in my name.

Mr. PRESIDENT: Leave that out for the present. Speak on the two motions now before the House.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that in clause 4, in proposed section 20A, lines 4 to 6, the words and figures "or has any such firearm in his possession or under his control in contravention of the provisions of section 14 or section 15" be omitted.

I want to draw a distinction between the offence of one who goes armed with the intention to commit murder and one who has been found in possession of firearms or one who has firearms under his control with the intention of committing murder. In order to commit a murder one has to form an intention first and then he will collect arms and with these arms he will have to go out and then make an attempt,

whether successful or not. In one case the person armed with firearms is determined to commit murder, but when a person collects firearms with the intention of committing murder he is not so determined as the man who goes armed with firearms to commit murder. He may change his intention and give up those firearms. But if that man then be found in possession of those firearms he may be punished under this clause with life sentence. Sir, this life sentence should be very sparingly used. If not, it will lose its deterrent character. It may be argued that there is a provision for transportation for life or imprisonment for a term of years or some lesser sentence, and it may be that the Commissioners will use their discretion in inflicting these sentences, but considering the fact that the life sentence, the highest penalty, is there and the fact that the Commissioners being human beings may commit an error, then there is no chance for the one who goes armed.

Mr. PRESIDENT: Are you really speaking on the motions moved by Satish Babu?

Babu HEM CHANDRA ROY CHOUDHURI: There is a provision of life sentence in section 20A——

Mr. PRESIDENT: I think you are speaking on your own motion and not those that have been moved. You can't do that. You should be able to forget your own motion for the time being.

Babu HEM CHANDRA ROY CHOUDHURI: I was intending to speak on item 36.

Mr. PRESIDENT: What you have said now has bearing on the clause, but not on the two motions.

Babu HEM CHANDRA ROY CHOUDHURI: If I have to speak on these two motions then I have to refer to the clause.

Mr. PRESIDENT: But you must forget your own motion for the time being. I know it is difficult for you to get out of your set speech, but you must try.

Babu HEM CHANDRA ROY CHOUDHURI: I have not moved that, but I am speaking on the clause so far as it refers to the motion.

I was saying that the death sentence being there, and the Commissioners being liable to errors, they pass the death sentence and an error once committed there is no chance of its being corrected. I think passing of the death sentence should not be left to the discretion of the Commissioners and we, the elected members of this House, being responsible to the people, should not leave death sentence in comparatively trifling cases with the discretion of the Commissioners.

Babu KISHORI MOHAN CHAUDHURI: I have also got a motion of this sort. I also move that the position should be very carefully considered, as it has not been defined anywhere what sort of offence is to pay the highest penalty. Anybody may have something in his house, and if he cannot account for how the things came into his house, he may be called upon to explain, and if he has got no explanation to offer, he may be punished with death sentence. So before punishing a man to death for the simple reason that a firearm has been found in his house, the matter should be carefully considered. It is not for sympathy for the terrorists that we object to the inclusion of this portion, but we say that in the name of justice no injustice should be done. We now hear that this measure is necessary because recruitment of terrorists has not been stopped. We do not know what sort of recruitment is made; it is on the information supplied by the police that the terrorists are being recruited. The things appear to be absurd. If anybody would know that recruitment is going on and if there is any such case, he can be easily brought to justice. But simply saying that the recruitment is going on and therefore to stop further recruitment a measure like this is absolutely necessary is not justifiable. We say we have not been satisfied, and we see no ground that such a measure should be brought forward as there is no real occasion. The sole question is whether an occasion has arisen, whether a drastic measure like this is to be enacted and whether special care should be taken that an innocent man should not be harassed in any way. Without doing that but simply to say that as firearms have been found in possession of anybody and for which no license has been taken and also that some links for the supply of the firearms have been found, therefore the man should be punished with death, is not justifiable at all. Any sort of proof can be adduced that he is associated with that sort of man or he is a man of that sort of temperament, and therefore his intentions may be inferred, and he may be punished with death sentence. It is to prevent this that we suggest that let this be omitted. As has been said by Satish Babu and Hem Babu, if anybody is armed with a deadly weapon from which it can be inferred that he is going to commit a murder, that intention will be clearly manifest from his action and for that he may be proceeded against in any way. But simply finding out something in the house of anybody and to consider it as possession by the owner of the house without showing anything by which it can be inferred that he abets the movement in any way is an absurd thing, and the position is rather awkward, and we hope Government will very kindly consider that such a clause is not at all necessary. If it is necessary, it should be clearly defined what sort of possession is contemplated in this section. Simply finding out a thing should not be punishable as contemplated in the Act. We have time and again protested against the adoption of drastic measures. As I have already said, we have no sympathy with the terrorist movement, but it is only

to prevent any miscarriage of justice that I think that it is absolutely necessary that this clause should be omitted. In this view we have brought forward this motion, and I appeal to the Hon'ble the Home Member that he will at least concede to omit this portion of the clause which would remove a very objectionable feature of the Bill. With these words I move the motion that stands in my name.

Dr. NARESH CHANDRA SEN GUPTA: I shall first of all anticipate an objection which may be made to the amendment proposed by Mr. Roy Chowdhury and shall try to show that the amendment is necessary. It may be said that the possession of firearms in itself is not an offence but possession or control of firearms under circumstances indicating that the person intended that such firearms shall be used for the commission of murder is an offence. Therefore, it may be said that the sort of constructive possession for which a person might be hauled up under the Arms Act would not bring him under the mischief of this section. But there are two very recondite terms which have been used in this little paragraph—the words upon which judicial decisions have built up a whole literature. First of all, there is the word "possession." What constitutes possession, and secondly what constitutes intention? Supposing a person is in possession of a firearm, because he has control over and access to the firearm in his house and that possession is accompanied by such a state of mind from which it may be said that he knew that it was a natural consequence of the existence of firearms that murder should be committed, it would be hard to make the Commissioners believe that the man did not come within the mischief of the section, for possession was clearly established in this case. So far as the intention is concerned, the intention is not to be the use the firearm himself for the purpose of murder, but the intention that such firearms *should be used* for the offence of murder. If he knew that there was a firearm in the House, under certain circumstances normally murder might be the natural consequence. Well, a man is said in law to intend the natural consequences of his action. Therefore, that he intended to commit the murder would be an argument which would be open to the subtlety of the Public Prosecutor and certainly to the subtlety of the legal genius presiding over the special tribunal. What are the natural consequences? Again, upon that lawyers will remember a long array of cases in which very very nice distinctions are made—distinctions which will convey no significance to a mere layman. You are, by this wording of the section laying persons open to the mischief of this section whom you probably do not intend to include. One does not know how a tribunal which is in this case different from the ordinary tribunals in more ways than one will interpret these words "intended" and "possession." The result of that is that the person, though he may not have intended that murder should be committed by a revolver in

his possession, should nevertheless be punished under this section. If there is that likelihood, it is by all means necessary that this clause should be amended in the way suggested by Mr. Ray Chowdhury. But I am not pleading only for the amendment of this clause in this way. I would let the clause remain as it is, if the Hon'ble Mr. Reid would just take out three words from this section, namely, "with death or." Let the rest remain. Take away the death penalty, and I would not object to this. I would not ask for the amendment. If the death penalty remains, the amendment which has been suggested is the least that is wanted. Sir, last evening this hall was ringing with the clamour for constructive suggestions. Well, if the voice which was thirsting for constructive suggestions really reflected "his master's voice," then the Hon'ble Mr. Reid ought to be glad that Mr. Roy Chowdhury has come forward with a suggestion which is certainly a constructive suggestion for the improvement of the section. The Hon'ble Mr. Reid may think that it means no improvement but whittling down. Whittling down this section would certainly be an improvement. If you can whittle down the provisions of this section till it was absolutely abolished, it would be still a greater improvement, for, as I have said, I do not want to repeat to this House, that this death penalty for offences of this character where no lives are taken is going back to the days of our primitive ancestors and perhaps going even further back. It is not only stepping backward, but it would also, as I submitted yesterday, be a measure which would not answer the purpose that we have in view. I confess that I have no constructive suggestion to make. I have only destructive suggestions to make so far as this Bill is concerned, and that for the very simple reason that I am not satisfied, the Government has not cared to satisfy me or any one in this House, that there is the least necessity for this Bill. I leave aside all its predecessors. We have not been satisfied with any evidence that has been placed before us that without this Bill Government would be absolutely helpless. Government have not taken us into their confidence. If they had, if we had a real appreciation of the problems with which they are faced, possibly we might make constructive suggestions.

Mr. PRESIDENT: I do not think you need labour that point. We are now concerned with the amendment that is before the House.

Dr. NARESH CHANDRA SEN GUPTA: But I understood that you ruled that we might speak on the clause also.

Mr. PRESIDENT: Yes, but not on the Bill.

Dr. NARESH CHANDRA SEN GUPTA: I am speaking on this clause. What I was suggesting was that nothing had been placed before us to show that without this clause the Government would be absolutely powerless to deal with terrorism. On the other hand, we have been told over and over again that terrorism has been brought well under control even without this. That being so, we are not in a position to give any constructive suggestions, and I do not offer any constructive suggestions, but say that if this provision is passed in this form, if this death penalty is allowed to disfigure the statute book, it will not be a mere *Juju* to frighten the little children of Bengal, but it will be worse, it will bring down upon you consequences which you will be afraid to face.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Babu Satish Chandra Ray Chowdhury has really thrown some doubt in the minds of those who are really trying to do justice to both the sides. Sir, I am not a practising lawyer, so I am not sure whether my friend is right or wrong. He has told us that if the wording of this clause is allowed to stand as it is, there will be a chance of miscarriage of justice and so he has suggested an amendment, especially the amendment saying that anybody who knowingly possesses arms may be considered to be guilty. I am not thinking of his first amendment, but of his second amendment; whether the word "knowingly," will really improve the case and will remove all doubts from the minds of Judges and the tribunal is a matter which lies with the lawyers to enlighten us upon. So I will appeal to the Hon'ble Sir C. C. Ghose, who was lately the Chief Justice of Bengal, to clear the position and tell us whether the explanation that has been suggested to this House by Mr. Ray Chowdhury is correct or otherwise. If the suggestion that he has made is correct, I think the House will be justified in accepting the second amendment and removing a lot of misconceptions which may arise in future. If mere constructive possession is meant by the word "possession" here, then I fear that there may be difficulty in future. But if by the word "possession" actual possession is meant, the thing may be quite different. So here if by "possession" constructive possession is also involved, I have some grave fear that there may be difficulty ahead of us. But as regards the second element which will constitute the offence—meaning the existence of circumstances indicating that this weapon would be used for the purpose of committing a murder—it is an element which may be oftentimes obtained if the prosecution is determined to have it. Sir, I think the first element, namely the element of possession should be absolutely free from all doubt, and if that can be done by accepting this amendment which wants to insert the word "knowingly" I believe it will improve the Bill. My attitude will depend upon the opinion that I may receive from the Hon'ble Sir C. C. Ghose in the matter.

The Hon'ble Mr. R. N. REID: Sir, the mover of the first amendment, Babu Satish Chandra Ray Chowdhury, devoted a considerable amount of time to explaining to the House that this clause was going to bring everybody on the same level and to spread the net so wide, if I gathered his meaning aright, as to inflict the death penalty to all and sundry. Well, Sir, I can only suppose that he had not very carefully read the whole of this clause, because the clause makes it perfectly clear that it is only intended to apply to cases where a person is found in possession of firearms or has under his control under circumstances indicating that he intended that such firearm should be used for the commission of any offence of murder. To say that those words should be interpreted to mean that all and sundry will be made subject to the death penalty, that anybody and everybody is going to be swept into the net is, I beg to submit, quite preposterous.

He has again moved an amendment (amendment No. 18), in which he wants to insert the word "knowingly" before the words "in his possession." As regards that, I submit that the word "knowingly" is not necessary and the insertion of the word proposed would not help, because it is implied in the words "that he intended." Obviously, a person could not be made subject to this section unless he were proved to have the arms in his possession knowingly, otherwise the intention could not possibly be brought home to him.

Then Babu Hem Chandra Roy Chowdhuri in supporting his own motion which, however, is identical with the first amendment of Babu Satish Chandra Ray Chowdhury, referred to trifling cases. But, Sir, this clause is not intended to deal with trifling cases; far from it. There is no intention on the part of Government to make it possible to have the death penalty inflicted in trifling cases. It is only in cases, as the clause itself says, where a man is found in possession of firearms under such circumstances as indicate that they should be used for the purpose of murder, that this clause will be used. (There is nothing trifling about that.)

Babu Kishori Mohan Chaudhuri expressed some apprehension about the interpretation of the word "possession" and how it might be used to bring in people within its scope who were perfectly innocent. There, again, my answer to that is the words of the clause which says "under circumstances indicating that he intended that such firearm should be used for the commission of any offence of murder"; that is my answer to any difficulty about that. There is no intention whatever of using this clause except under those circumstances. In every case, it would be for the tribunal to judge whether the circumstances were such as to bring an accused person within the purview of that particular clause.

I do not propose to follow Dr. Naresh Chandra Sen Gupta into the realms of the nice distinctions, and the subtleties of which are quite unintelligible to a layman, because being a layman I am sure I shall never find my way out of them. I do think, however, that there is no fear that the words as they stand in the clause can be interpreted in such a way as to bring within the purview of this clause anyone who is not in the first place a terrorist and anyone who is in the second place not guilty of being in possession of a firearm in circumstances which point to his intention of committing a crime of murder. That is the sole purpose of the clause; it is solely directed against terrorists and terrorists who are found guilty for being in possession of arms under those particular circumstances. I beg to oppose the motions.

The two motions of Babu Satish Chandra Ray Chowdhury were then put and lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 4, line 6, for the word "indicating," the word "proving" be substituted.

The last speech of the Hon'ble Member was that amendments Nos. 15 to 17 and 18 were not necessary, because these cases will be confined to only where there was an intention to commit a particular offence. But now the difficulty is that here we are, as it is said, within the uncharted seas. We do not know what is meant by the words "circumstances indicating that he intended." These are words which I have never come across in any other piece of penal legislation in this country. It will be for the members of this House to enlighten us if such words occur in any other penal legislation. In dealing with the definition of the word, it is laid down in the Evidence Act that a fact is said to be good when after considering the matters before it the court either finds it to exist or consider that its existence is so probable that a prudent man should act on the assumption that the things exist. This is laid down in the Evidence Act in the definition of the word "proof." These words which were used in the Evidence Act deliberately and which have stood the practice of ages without causing any miscarriage of justice were deliberately shunted off and in place of that we find two words "circumstances indicating." Why can't you rely on that definition even when the definition lays down the words "so probable that a prudent man ought to act on the assumption, etc."? The result is that even when it is thought that a prudent man ought not to act on the assumption, even then it will be presumed by a tribunal that, as a matter of fact, a murder was intended. If that be so, I submit that we do not know whither we are drifting. We do not know what are the cases in which the Commissioners will hold that a murder was intended from the slightest circumstances. It

is not a case therefore of the fact being proved, nor is it a case of a fact not being proved, but it falls far short of either when words used are "circumstances indicate." Now this goes to show that as a matter of fact the whole thing will be left to the Commissioners without any condition and without any safeguard. The interpretation of circumstances as indicating will be different according to the different mentality of the Commissioners and nobody will be in a position to say that these circumstances do not indicate that murder was intended. Why do you make it so painfully vague? The law is intended to be made as clear and as lucid as possible, so that doubts may not arise in the minds of anybody. But you have purposely made it vague, thus giving rise to the suspicion that all and sundry may be brought into the net. Otherwise, why the definition in the Evidence Act is insufficient for you? If the Commissioners are prudent men, why cannot they be guided by any definite standards of proof. This makes us suspicious that what is intended is more than what meets the ears. I submit, Sir, if it is really meant that we should have a clear meaning for the terrorist of what is going to happen to him in case of a particular conduct being proved against him, let the words be clear and let the meaning be clear and let it not be left to the choice of the tribunal. It will be wasting the time of the House if I were to quote the different interpretations which have been put on words like this, and I would only just point out that here is another danger signal to which the Government should take note of. If they do not do it, a time will come when the law will cease to exist for the protection of citizens. With these words I commend my motion to the acceptance of the House.

Mr. NARENDRA KUMAR BASU: Mr. President, Sir, I beg to support this amendment, but I want to ask the members of the Government Benches, lawyers or no lawyers, to remember that the word "indicating" is a very vague expression. A thing indicates something when pointing at a certain direction, but it is quite a different thing from proving. There may be several circumstances pointing to the direction that the persons who possess arms come within the purview of the indication mentioned in the clause, but there may be other circumstances indicating to the contrary, and the net result is what is held to be proved by the court. Therefore, I do not think that it is intended by this clause to say that if there are circumstances indicating one direction the man will be punished even if there are circumstances indicating the other view. What really is meant is that it is only when in the circumstances of the case intention is proved, the man should be punished under this clause. I do think that the word "proved" will be a considerable improvement to the clause as it stands. Therefore, I commend the motion to the acceptance of Government.

The Hon'ble Mr. R. N. REID: Sir, it is a matter of opinion to a great extent. I think Mr. Basu considers that the alteration of the word "indicating" to the word "proving" would be an improvement. He does not imply that there is some hidden, subtle meaning in this word "indicate" which means that Government intend to drag all and sundry into the net so that they may be hanged. But there are two kinds of proofs as I understand it. I am not a lawyer and I am rather diffident about expressing an opinion on such things when surrounded by eminent lawyers, but I understand, as far as I know, there are two main divisions; one is direct proof—direct proof in the sense that so and so says that he saw an offender doing such a thing—and then he may lie. There is also circumstantial proof which is proof which depends on a certain set of circumstances which also, I suppose, may possibly lie under certain conditions. At the same time, circumstances, as Mr. Basu so very clearly indicated—I use the word "indicated" because circumstances do point in a certain direction. That, of course, as he knows very well, is the meaning of the word from its derivation—index finger. On the other hand, I quite agree that if there are certain circumstances which point to one direction and other circumstances which point to another direction, then it can only be the court which can decide. They will have to decide whether the finger that points in that direction is the correct one or the finger which points in the other direction, and when that is decided they have to come to the conclusion whether that pointing is sufficient for them to hold that the intention of the person concerned—the person accused of a particular offence—is such as to bring him within the purview of the law. In any case, Sir, what I want to say is this. I do not really think, as Babu Satish Chandra Ray Chowdhury says, that there is any real advantage in changing the word "indicating" to the word "proving." I am perfectly certain that any properly constituted court would take the circumstances very carefully into consideration and they will not accept the circumstances which merely point with a hesitating finger one way or the other as sufficient ground for holding a man guilty of a particular charge. They will only accept such circumstances which point, without any question of doubt, in the direction of guilt. So I beg to oppose the motion.

Babu Satish Chandra Ray Chowdhury's motion being put, a division was taken with the following result:—

AYES.

Banerji, Mr. P.
Barman, Babu Premhari.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kishori Mohan.
Chaudhury, Maulvi Nurul Abser.
Fazlullah, Maulvi Mohammad.
Ghose, Dr. Amulya Ratan.
Hoque, Kazi Emdadul.
Khan, Maulvi Tamizuddin.
Mallik, Mr. R.
Mukherji, Rai Bahadur Satish Chandra.
Mukhopadhaya, Rai Sahib Saral Chandra.
Nag, Babu Suk Lal.

Poddar, Seth Hanuman Prasad.
Quasem, Maulvi Abul.
Rahman, Maulvi Azizur.
Ray, Kumar Sahib Shekhareswar.
Ray Choudhury, Babu Satish Chandra.
Rout, Babu Nagendra.
Roy Choudhuri, Babu Ram Chandra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hakim.

NOES.

Afzal, Nawabzada Khwaja Mahammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emadeddin.
Ali, Mr. Altaf.
Armstrong, Mr. W. L.
Ashworth, Mr. C. G.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Allimazzaman.
Chaudhuri, Khan Bahadur Maulvi Nazzur Rahman.
Chowdhury, Maji Badi Ahmed.
Dale, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutta, Mr. G. S.
Edgley, Mr. N. S. A.
Faroqui, the Hon'ble Nawab K. B. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghose, the Hon'ble Sir Charu Chander.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dildaar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Mr. P. N.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Maulvi Mahammad.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Mr. Razaur Rahman.
Law, Mr. Surendra Nath.
Magaire, Mr. L. T.
Martin, Mr. O. M.
Mason, Mr. S. A.
Miller, Mr. C. S.
Mitter, Mr. S. C.
Momin, Khan Bahadur Mahammad Abdul.
Mullick, Mr. Mahendra Behary.
Nag, Reverend S. A.
Nandy, Maharaja Sris Chandra of Kasimbazar.
Nazimeddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. S. K.
Norton, Mr. H. R.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abder-.
Reid, the Hon'ble Mr. R. N.
Ross, Mr. J. D.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Ray, Babu Jitendra Nath.
Roy, Mr. Sailesswar Singh.
Ray, Mr. Sarat Kumar.
Ray, Mr. S. N.
Sandatullah, Maulvi Mahammad.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rebati Mahan.
Sen, Rai Sahib Akshey Kumar.
Sen, Mr. B. R.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deG.
Woodhead, the Hon'ble Mr. J. A.

The "Ayes" being 24 and the "Noes" 65, the motion was lost.

Mr. P. BANERJI: I beg to move that in clause 4, in proposed section 20A, lines 10 and 11, the words "with death or with transportation for life or any shorter term or" be omitted.

As we have failed in our attempt to delete this whole clause, the next best thing is that we must suggest to the Government——

Mr. PRESIDENT: Will you also move amendment No. 34 standing in your name and make one speech? That will save a lot of time.

Mr. P. BANERJI: I shall do so. I also beg to move that in clause 4, in proposed section 20A, last line, for the word "fourteen," the word "ten" be substituted.

Sir, in spite of the arguments that have been given by the efficient lawyers from this side of the House I am surprised that the Hon'ble

Home Member, though admitting that he is not a lawyer and could not follow all these things, still he should have stood by the opinion that has been given by the eminent lawyers of all sections of this House. Sir, as I pointed out yesterday, the object of the law is not to be always fair. Sir, though we belong to the different group in this House and come from different constituencies, but still when we come here we represent the whole province, and we, as legislators here should seek to-day and for all time to come, when passing any law, that that law should always be fair and that the administration of that law will also be fair and just. It has been said by the eminent lawyers on this side that the jurisprudence of the civilised world says that law must not be so harsh as the present law and as always the benefit of doubt is to be given to the accused persons, it must be the object of the law that no innocent person should suffer. That being the case, we must always look into that jurisprudence and find the state of affairs of all countries over the world. Sir, Mr. Armstrong, whilst speaking on the subject, supported the Government, saying that both the members were nice gentlemen and they were calmly sitting there. Sir, we all agree that they are nice gentlemen; but that is a different matter so far as their personal qualities are concerned, but as Government members they are all hard-hearted people. That being the case, I will prove immediately to you gentlemen that they are here gossiping and trying to put obstacles in the way of speaking and of those who want to listen to the debates attentively. I do not understand what is the reason for the Government in not accepting this——

The Hon'ble Mr. R. N. REID: Sir, is the hon'ble member speaking on Nos. 24 and 34, or some other amendment? I am at a loss to understand him.

Mr. P. BANERJI: I am absolutely speaking on my motion.

The Hon'ble Mr. R. N. REID: He is speaking on the whole clause.

Mr. PRESIDENT: I know. He may do so; but, Mr. Banerji, you are referring to an amendment which has just been lost. You certainly cannot do that.

Mr. P. BANERJI: At the same time, Sir, whilst speaking on the amendment, you have certainly allowed me to speak on the whole clause. That being the case, if I pass any remarks whatever on the clause that stands, am I out of order?

Mr. PRESIDENT: You are not supposed to reopen the debate that has been closed. The House has already taken a definite decision relating to the last amendment. So you will be out of order if you

will try to reopen the debate on that. But nevertheless you were perfectly right when you said that the clause itself is still open to discussion, but it is essential that you should chiefly speak on the motion you have moved; that is your first and primary duty.

Mr. P. BANERJI: I can quite follow you with regard to the merits of that point, but the attitude of Government——

Mr. PRESIDENT: Please do not labour that point, but come to the subject under review.

Mr. P. BANERJI: It has been said to-day and also yesterday when discussing this point that there is a law of an eye for an eye, a tooth for a tooth and a life for a life. That was perhaps the law in primitive times. That position has been clearly explained, but to-day, as I said, that after so many years of British rule in this country the laws should be changed in a way that instead of penalty for three years now, Government comes forward with a Bill in which it seeks to inflict the death penalty in case of innocent men who are not actually committing murder. Now it is a mere intention and not the fact that the offence has been committed at all. These words have been included so nicely and in such a vague manner that there is a possibility of a wrong interpretation by those persons who will administer justice. It is quite possible, and we find that in this country where the administration of justice is not subservient to the executive, and the way in which the police is treating the people of the country we find that they are not servants of the public but really masters of the public. Under the peculiar circumstances, it is necessary that the law should be so made that it must be just and particularly there should not be any punishment for mere intention. The Hon'ble Member thought that this was no argument whatever.

(The Council was then adjourned for 15 minutes.)

(After adjournment.)

Mr. P. BANERJI: Sir, I was just submitting to you that nowhere in the civilised world, either in the jurisprudence or in any law, there is such a thing as intention is punishable. Intention is never punishable. So long capital sentence used to be awarded only in cases where there has been an actual murder, but subsequently it has been changed and attempt at murder is also penalised. I would ask the Hon'ble Member to cite an example in any country anywhere in the world where intention has been penalised. That is not the intention of law or any legislature. That being the case, why in this instance Government should seek to award capital sentence. It has been said that it will be deterrent. How will it be deterrent? Capital

sentence is also awarded in case of other offences, but have those offences been stopped? No. Therefore, the fact remains that it will not have any deterrent effect. By this Act Government will create a vicious circle. It is possible that the judiciary will consider the cases very minutely and will entirely depend on the direction or rather indication that is given to them. I think this would be absolutely a one-sided affair. It has been stated by the Hon'ble Member that the circumstances would prove the intention. I say it would be very difficult to prove that, and in no case the benefit of doubt will be given. Therefore, while legislating in a matter like this, we should think very calmly of the sentence that we provide for in it. It has been said that it will not touch either the Muhammadans or the depressed class Hindus. That is the rumour going on and things have very much changed on that account. This lobby gossip is going on and it must have emanated from Government. Government says that this sentence will be inflicted on the terrorists. The Hon'ble Member has said that if we look at the background of the photograph, we will find the terrorists. I say that is not the real background. It reminds me of a story of a sugarcane plantation in Behar some time ago. There in the plantation during the hot days pilfering was going on for some time and nobody knew by whom. One day as the planter was going on his round, he found two rustics sitting under the shade of a banian tree and found a lot of chewn sugarcane lying near them. One of the rustics was a Muhammadan and the other a Hindu. Addressing the Muhammadan the planter said: "Well, my food is yours and your food is mine, therefore you may eat my sugarcane." But to the Hindu he said: "Your food is not mine and my food is not yours, so what right have you to eat my sugarcane," and he began to belabour the Hindu who fled away. After that he told the Muhammadan that although our food is the same, you should have taken my permission first and then eaten the sugarcane. So saying, he began to belabour the Muhammadan. I think that similar fate would be the fate of the Muhammadans and the depressed class Hindus.

Mr. W. H. THOMPSON: Mr. President, Sir, whatever you may have thought of Mr. Banerji's speech just now, and the examples he was about to give, yesterday there fell from his mouth a pearl of great price. In referring to this Bill he used a delightful expression; he called it advisedly barbarous. The expression is one which should not be lost in oblivion. Although it is not often that I agree with Mr. Banerji, I do agree with him in applying this delightful expression "advisely barbarous" in this particular case. In providing for punishment for the unlicensed possession of arms under circumstances indicating the intention that a terrorist murder shall be committed, Government intends to be "advisedly barbarous." It intends definitely that

this shall be deterrent. In the case of those outrages which have become common in this province, it has always been a valuable life that has been sacrificed. What we are attempting to do is to stop more sacrifices, not to insist on a heavier punishment for the individual miscreant. When we lose a Peddie or a Burge who are irreplaceable, it is a minor consideration what happens to the miserable creature that did the deed. But if, by putting a death penalty on to this offence or anything connected with this offence which shows the intention to murder, we can deter the possible offender, we should not hesitate to do so. We should not let feelings of sentiment in favour of existing forms of law or standard of punishment turn us aside from taking a practical step in the right direction. Mr. Banerji referred again to those words "indicating the intention." Actually in this section we are amending the Arms Act. The words "indicating the intention" are the words used in another section of the Arms Act—in section 20 of the Arms Act. That is the reason for their use here and Mr. Satyendra Ray Chowdhury should not be suspicious that these words——

Babu SATISH CHANDRA RAY CHOWDHURY: On a point of order, Sir. Was not this point disposed of yesterday?

Mr. PRESIDENT: I think it was.

Mr. W. H. THOMPSON: But I think this matter was brought in again by Mr. Banerji. However, I will not labour the point.

Mr. PRESIDENT: To save time, may I suggest that you should also move your own amendment at this stage and make one speech?

Mr. W. H. THOMPSON: I will, Sir. More than once both yesterday and to-day we have been taken back to the good old days of barbarism—the genuine article, not "advised barbarism"—we have been taken back to the law of an eye for an eye and a tooth for a tooth. Times have changed since, and we have gone along from that standard of law, but curiously enough there is one instance in which our law still keeps the idea of an eye for an eye and a tooth for a tooth. As legal practice has progressed during the last two or three centuries, the courts have tended to look more and more to the intention of the accused person placed before them not only to decide what offence he has committed, but to decide how he should be punished. It is a curious fact that there remains that relic of the law of barbarism in the law on murder. An eye for an eye, a tooth for a tooth, and no death sentence without a dead body.

Sir, the Penal Code makes a slight modification in this, which is not in the English law, when it provides death sentence for participating in a dacoity in which a murder is committed. We have already passed the Bengal Criminal Law Amendment Act of 1932, a law which provides a death penalty for an attempted murder, and it is only a very short way further to pass this clause and embody it in the Bill. I submit that as our purpose in this Council is very definitely to leave no stone unturned which can scorch the terrorist movement, we should take this step.

Mr. PRESIDENT: But you have said nothing about your own amendment.

Mr. W. H. THOMPSON: I beg your pardon, Sir. I beg to move that in clause 4, in proposed section 20A, in the last line, for the words "or with fine," the words "to which fine may be added" be substituted.

I think this is possibly merely a mistake—a mistake in drafting—because I find that clause 5A ends with the words "to which a fine may be added". Now, Sir, Mr. Reid has already told us that these sections are not meant to deal with trivial matters and a fine cannot be a fit punishment for so serious an offence. It does seem that the provision for the punishment of a person mixed up with a terrorist murder plot merely a fine is entirely out of place, and I would accordingly request that Government will be pleased to accept this amendment of mine and bring clause 4 into line with clause 5A.

Mr. PRESIDENT: I propose to take up motions Nos. 24, 25, 34 and 35 and have one discussion on them.

Babu JATINDRA NATH BASU: I beg to move that in clause 4, in proposed section 20A, lines 10 and 11, the words "with death, or" be omitted.

In framing a code there should as far as possible be exactitude in the phraseology used in embodying the intended provisions, so that there may be no occasion for confusion for those who have to deal with the provisions of the law either from the Bench or from the Bar. My amendment intends to delete the sentence of death from the proposed section 20A of the Arms Act. That section enunciates the offence and lays down the sentence. But the offence is enunciated in terms which can hardly be called exact. I would call your attention to the wording of the proposed section. I need not take you through the first four lines, but about the end of the fourth line it says—

"or under his control in contravention of the provisions of section 14 or section 15, etc."

The House has already heard some of the previous speakers calling attention to the difficulty of interpreting the words "possession" and "control." For instance, if someone throws a firearm under the hedge which fences from the boundary of your house, it may be that it is a place which is in your possession and under your control, and you are liable to be punished for no guilt of your own. There is no doubt that the provisions are modified by the words which follow, which go on to say "under circumstances indicating that he intended that such firearm should be used for the commission of any offence of murder shall, if he is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, be punished with death" or with the other punishments already laid down in the Indian Arms Act as amended by the Act of 1932. Therefore, it is clear that what is intended by this new section is that the tribunal which will deal with the offence, which, as I have pointed out, is defined in very vague terms, will base its findings and decision on circumstantial evidence. Now, Sir, a sentence of death on mere circumstantial evidence is a very serious thing.

I remember a case many years ago in the criminal sessions of the Calcutta High Court in which a man was tried for shooting his father dead in order to obtain his money. The evidence in the case was entirely circumstantial. The crime was committed in the night and there was no direct evidence of the murder. But there was no doubt in the minds of the Judge and the jury as to who was the person who committed the crime. But the Judge did not take the responsibility of passing death sentence and the man was sentenced to transportation for 20 years. Sir, that is the basic principle of law. In this case there is nothing that has been urged which can lead us to entertain a different view of the law. It has undoubtedly been said that this special difficulty is owing to the terrorist movement. I do not minimise that difficulty. If Government had not been alive and alert to the difficulties that the movement presents and the public had not been alive and alert also, they would have been remiss in their duty. Besides, the Government there is a large mass of the people of this country who have to deal with young persons in various spheres. You may know that in this province there are nearly a thousand public high schools with a large number of boys of an impressionable age in them, and out of these only 50 are State schools and the rest are managed by private governing bodies; the tremendous amount of work that has been thrust on them in consequence of this movement is not fully appreciated in Government quarters. There is a large number of college students in Calcutta, but for nearly the last quarter of a century, there has been a certain aloofness between Government as it is now constituted, and the young folk that come to Calcutta for the prosecution of their studies. Sir, more than 40 years ago I remember my own college days, and I also

remember how the then Lieutenant Governor of the province invited college boys to Belvedere by batches. I also remember having rowed with the then Lieutenant Governor in the same boat in the Serpentine at Belvedere.

Sir, things have changed now. There is no sympathy now for the young men. They have to lead dull lives without anyone trying to shed brightness on their dull and uninteresting days. The governing bodies of the various colleges and the various students' organisations have to see that the students do not go into paths which are objectionable. Sir, this is a very great and laborious duty, but it has to be performed, and the reason why the whole countryside is not aflame is because the stable elements in the population have put their foot down and are doing their best though unrecognised by the Press and the Government, who only confine their attention to the technical maintenance of law and order.

But, Sir, the situation, difficult as it is, should not be rendered more difficult by measures like this. The Hon'ble the Home Member has said that it may deflect the minds of *some* of the young men from the methods of terrorism. It may; but on the other hand, the encroachment on the ordinary liberties of persons and such other drastic remedies create an atmosphere of dissatisfaction with the policy of Government which makes it exceedingly difficult for those who stand in their own way. We, Sir, should not have very short memories in this respect. Those who lived during the first decade of this century—before the Partition of Bengal came in—know what amount of friendly feeling existed between those entrusted with the work of the administration, and the people; but there has since then been an everwidening estrangement. What is the reason of this? The reason is that from 1908 onwards Acts upon Acts like this have been piled up and introduced into the statute book; with what result? With this result that when there were only about a hundred persons who could be counted on one's fingers who were seriously inclined to upset by violent methods the ordered state of things, at the present moment it will be difficult to judge their number, and I leave it to the Home Member to judge what their number is. We have now cases at Chittagong, at Rajshahi and in different parts of the country. The movement has spread all over the country. But have these measures succeeded in stamping out the terrorist movement and in creating an atmosphere of peace and trust? They have not. You must base your policy on facts, and not merely on surmises and on the present situation. When you find that a crime has been committed, go for the crime with all the strength of Government, kill it, scotch it and you will have the support of all of us; but if you go on piling measures which place in the hands of the Executive powers which take away from what the people consider to be cherished ideas of their own freedom and their personal well-being, it is then that you create an atmosphere which is not an atmosphere

in which a measure like this can effectively operate. Sir, as I have pointed out as regards the proposal that I present before the House, the proposal is only to take away the sentence of death. The sentence of death is an extraordinary sentence to provide. Such measures create a sense of irritation not only, as I may tell you, against the Government, but also to one who has to fight the elections even though not against the terrorists but against some milder people like the Congress or the people of the Swaraj Party. The spirit of discontent is growing wider and deeper. It will not be remedied by this sort of legislation. With these few words I commend my motion to the acceptance of the House.

Mr. PRESIDENT: I may tell the House that His Excellency the Governor has ordered that the Council will sit at 2-30 p.m. instead of 3 p.m. for the remainder of the week, and I propose to sit up to 7-30 p.m. to-day so that clause 4 which was taken up yesterday may not be held up, and I do not see any reason why it should be dragged on to to-morrow.

Mr. NARENDRA KUMAR BASU: Mr. President, Sir, I think my first duty in rising to speak on this amendment is to thank the Hon'ble Home Member for not only dragging the red herring across the trail as he put it in the discussion, but effectually doing away with the veil by which it is sometimes tried to cover Government's actions. In his speech, in reply to a somewhat similar amendment moved by Mr. J. N. Basu, namely, the one to delete clause 4 altogether, the Hon'ble Mr. Reid was good enough to say that so far as this clause is concerned all talk about the sanctity of human life, all talk about the ideals of justice are mere *bunkum*.

The Hon'ble Mr. R. N. REID: I did not say that.

Mr. NARENDRA KUMAR BASU: He did not use those words exactly; he was probably more parliamentary and more diplomatic, but what he did say was this, that in dealing with terrorists, people who have no idea of the sanctity of human life, it is idle to talk of the sanctity of human life. He said that because there are people outside this House, he gave three instances, who have no sense of the sanctity of human life and are desperate criminals; therefore the 140 members of this House must themselves turn aside all ideas of the sanctity of human life because the terrorists themselves do not care for law and order, and the Home Member asked the members of this legislative House to banish all ideals of law and order from their minds. Then what does it come to? I thank the Hon'ble Mr. Reid for his frank expression and that has been supplemented by the leader of the European Group, and I think we ought to be thankful to those members for having brought us round to the actualities of the situation. Those members of the House who think that they are making laws for the peace and

order in the province may now rest contented with the thought that in voting with the Government, in voting with the oracular statement of the Home Member they are expected to support "law and order" by the complete banishment of the law of the province. I submit, Sir, that so far as this legislative House is concerned, I will not use a stronger expression but it seems to me that the action which the Hon'ble Member expects the members of this House to take is this: that the Legislative Council should pass a thing that he had chosen whether it is law or no law. He repudiated the idea that he was a lawyer, but the originator and the promoter of this piece of legislation glories in the fact that he is not a lawyer and, therefore, it is open to him to come and propose any piece of legislation which does not smack of even the rudiments of legal training. That is all the respect that the Home Member has for the hon'ble members of the House. He says in fact that you must follow my behaviour and you have got to accept what I say, law or no law, jurisprudence or no jurisprudence. I want such and such a thing for the purpose of enabling me to rule the province, as I choose to rule and you have got to follow it. That is the attitude in which the Hon'ble Home Member gave his reply to the motion to which I have alluded. He made no attempt to meet the arguments, if there were any, advanced in support of the amendment, but brushed them aside and said that this is what is wanted for the purpose of protecting the province, and you must leave it to me. I must again say that he would not care for all the reasons that are given in support of the amendment because it rests with him and he knows there are 68 arguments in his favour. Sir, I submit that probably on this occasion also we shall be told that Mr. Basu's amendment is not worth considering because the Home Member has got either 68 or 78 or 100 arguments in his favour which he need not disclose, but by turning the handle he shall have all those votes. The reasons for the acceptance of the amendment moved by Mr. Basu are cogent and if reasons were to prevail in this House, I hope the House will see that this amendment is accepted; but if we are here solely to legislate at the will and pleasure of the Home Member and of the Government, whether lawyers or no lawyers, I submit, Sir, it will be like other occasions a mere cry in the wilderness. I hope the members of the House will rise to the occasion and say that it does not matter whether Government wants it or not; it does not matter whether it is necessary in the interests of the Local Government; the only thing that matters is whether the legislation that we are going to adopt is just or not, whether it is sanctioned by the ideals of law in all civilised countries, whether human life is to be held sacred not merely because the Government thinks that a person is to be tried by a special tribunal and not by an ordinary court, that is to say, only because a police informer or a spy demonstrates or gives certain circumstances indicating to the Local Government that a man is a terrorist or connected with terrorist organisations and therefore the trial

is to take place before a special tribunal and therefore the grim sentence of death should be passed upon him even though if he were tried before one of His Majesty's Judges in the Original Side of the High Court under the ordinary law and procedure the sentence of death would not have been passed. That is the consideration which the members of the House should give and not what the Hon'ble Home Member says what should be done.

Mr. W. H. THOMPSON: May I rise to a point of order, Sir? I found in my bench an unauthenticated document, and I am surprised to find that this was distributed all round the House. Most people read it by speeches or by word of mouth, and I am astonished to find this and would like to know whether it was distributed with your permission.

Mr. NARENDRA KUMAR BASU: I caused this document to be circulated, but with your previous permission, Sir.

Mr. PRESIDENT: Is it the one authenticated at my instance?

Mr. NARENDRA KUMAR BASU: Yes, Sir. I authenticated it.

Mr. PRESIDENT (to Mr. Thompson): I allowed its circulation.

Maulvi TAMIZUDDIN KHAN: Mr. President, Sir, I would not have intervened in this debate, but for the unfortunate speech of Mr. P. Banerji which he has delivered in speaking on his amendment No. 24. I am sorry I was not present during the whole speech, but I came at the end. I saw that the tail of his speech had a sting poisonous enough to alienate even his friends! He seemed to insinuate that the Muslim members of this House had made an unholy combination with the Government members in giving support to the Bill, because he said that the Muslims and also the scheduled caste people are not affected by this Bill. I contradict this statement with all the emphasis I can command. What does he mean when he says that this Bill does not affect the Muslims or the scheduled caste people? I say that this will not affect any people on account of the creed or community they belong to, but terrorists, irrespective of their creed or community will be affected by this Bill. Sir, does not Mr. Banerji know that so far as the death sentence amendment was concerned out of 28 members who voted for that motion moved by Mr. N. K. Basu as many as 12 were Muslims? What does that indicate? Does Mr. Banerji also think that the large number of Hindu members who have supported Government have also made an unholy combination with the Government?

Surely not. Everyone in this House must have voted according to his conviction. As regards his motion, I am not in favour of it because he wants to do away not only with the death sentence, but also with the sentence of transportation for life which is to be found even in the existing law. Mr. Banerji said at the beginning of his speech that he has no sympathy with the terrorists. I have no doubt about that, but why then does he propose that the punishment of transportation for life which is found in the present law should be done away with? So far as death sentence is concerned, I am definitely against it, and as such I support the amendment of Mr. J. N. Basu.

The Hon'ble Mr. R. N. REID: Sir, Mr. N. K. Basu has produced a bigger red herring to drag across the trail than he produced before in that he has put in my mouth the words which I have never uttered and has ascribed to me sentiments which I never felt. I rely on the memory of the House to absolve me from the accusation of having said all the things, the almost intolerable things, with which he has credited me.

Sir, we are now discussing amendments Nos. 24 to 35. To take Nos. 24 and 34 which were moved by Mr. P. Banerji: I listened attentively to Mr. Banerji's speech, in spite of a cloud of gossip which was going on while he was speaking and which he found so distasteful to him, and I was unable to discover in his speech any arguments in favour of the amendments which he moved. His first amendment is to the effect that the words "with death or with transportation for life or any shorter term or" be omitted and his second amendment is to the effect that the word "ten" should be substituted for the word "fourteen." It is quite obvious, Sir, that neither of these motions can be acceped by this House. As Maulvi Tamizuddin Khan said just now that they not only do away with the additional penalty which it is proposed to add in this Bill but also with the penalties which already are there in the Indians Arms Act and which were added two years ago with the consent of this House.

As regards the main motion No. 25-33 to omit the words "with death or," that motion has been discussed fully at the time when the previous amendments to omit clause 4 altogether were gone into. I have therefore nothing further to add. Here I shall be accused of brushing aside all the arguments, but I have nothing to add to what I had already said before except this, that that penalty has been inserted in this clause with a view to deal with a certain class of crimes—the crime of going armed or possessing arms in such circumstances as would indicate that the intention is to commit murder and murder by a person who is a member of the terrorist conspiracy. I claim, Sir, that that penalty can rightly be placed as a punishment for crime of that sort. And secondly it is—it may be useful as a deterrent. It is for these two reasons that these words have been inserted.

I am afraid I must demur to Mr. Thompson's views that this clause is a barbarous one. We are dealing with a barbarous class of people I admit, but I claim we are a civilised Government working on civilised lines (MR. SHANTI SHEKHARESWAR RAY: "Question.") And we do not use the methods of the enemies of the State which this clause is intended to deal with. The last amendment to which I have to refer is that which is moved by Mr. Thompson "to which fine may be added" instead of the words "or with fine" in the last line, of the proposed section 20A. I am prepared to accept that amendment because it falls into line with clause 5A under the Explosive Substances Act, and it is obviously inappropriate to impose a penalty of fine in these very serious cases which we contemplate—they are not trifling—cases.

With these words I oppose the amendments 24 to 34, and I accept No. 35 moved by Mr. Thompson.

Mr. P. Banerji's motion that the words "with death or with transportation for life or any shorter term or" be omitted was then put and lost.

The motion of Babu Jatindra Nath Basu that the words "with death, or" be omitted was then put and a division was called with the following result:—

AYES.

Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Naresndra Kumar.
Chaudhuri, Babu Kishori Mohan.
Choudhury, Maulvi Nurul Absar.
Fazlullah, Maulvi Mohammad.
Ghose, Dr. Amulya Ratan.
Hoque, Kazi Emdadul.
Khan, Maulvi Tamizuddin.
Maiti, Mr. R.
Momin, Khan Bahadur Mohammad Abdul.
Mukherji, Rai Bahadur Satish Chandra.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Quasem, Maulvi Abul.
Ray, Mr. Shanti Shekhareswar.
Ray, Chowdhury, Babu Satish Chandra.
Rout, Babu Nagendra.
Roy Choudhuri, Babu Nem Chandra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.

NOES.

Armstrong, Mr. W. L.
Bakhworth, Mr. S. G.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Birkmyre, Mr. H.
Bolthouley, Mr. J. H.
Burn, Mr. H. N.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. R. G. A.
Faruqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. N.
Ghosh, the Hon'ble Sir Charu Chandra.
Ghuznavi the Hon'ble Alhadj Nawab Bahadur Sir Abdulkarim, of Dilduar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Mushrraf, Khan Bahadur.
Khan, Mr. Razaur Rahman.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Mason, Mr. G. A.
Miller, Mr. S. G.
Mitter, Mr. S. C.
Mitra, Babu Sarat Chandra.
Mullick, Mr. Mukunda Behary.
Nag, Reverend S. A.
Nandy, Maharaja Sris Chandra of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Norton, Mr. H. R.
Rahman, Mr. A. F.

Rahman, Mr. A. F. M. Abdur.
Roy, Babu Khetter Mohan.
Roy, the Hon'ble Mr. B. C.
Ross, Mr. J. B.
Roy, the Hon'ble Mr. Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sangi Kumar.
Roy, Mr. S. N.
Saadullah, Maulvi Muhammad.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshey Kumar.
Sen, Mr. B. R.
Sinha, Raja Bahadur Bhupendra Narayan of Nashipur.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

The "Ayes" being 20 and the "Noes" 59, the motion was lost.

Mr. P. Banerji's motion that for the word "fourteen" the word "ten" be substituted was then put and lost.

Mr. W. H. Thompson's motion that for the words "or with fine" the words "to which fine may be added" be substituted was put and agreed to.

The question that clause 4, as amended, stand part of the Bill was then put and agreed to.

Adjournment.

The Council was then adjourned till 2-30 p.m. on Wednesday, the 7th March, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Wednesday, the 7th March, 1934, at 2-30 p.m.

Present:

Mr. Deputy President (Mr. RAZAUR RAHMAN KHAN) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 107 nominated and elected members.

LEGISLATIVE BUSINESS

GOVERNMENT BILL.

The Bengal Criminal Law (Amendment) Bill, 1934.

Mr. Narendra Kumar Basu in the absence of the Hon'ble President and the Deputy President took the Chair amidst cheers.

Mr. CHAIRMAN: We shall now resume the discussion of the amendments on the Criminal Law Amendment Bill, 1934.

The Hon'ble Mr. R. N. REID: May I suggest that we have one discussion on clause 5A. The points at issue are identical with those we were discussing yesterday on clause 4.

Mr. CHAIRMAN: I think it would be better to have one discussion on amendments Nos. 37-39 and to have a separate discussion on the other amendments because the latter refer to matters of detail.

(At this stage Khan Bahadur Muhammad Abdul Momin entered the Chamber and, at the request of Mr. N. K. Basu who had motions on the paper, took the Chair.)

Mr. SHANTI SHEKHARESWAR RAY: May I inquire from the Chair whether the Chairman has been authorised by the President or the Deputy President to take the Chair.

May I invite your attention, Sir, to clause 5, page 274, of the Rules of Business where it is stated that a panel-chairman can only take the Chair "when so requested by the President or the Deputy President." So I ask whether there has been a request from the [illegible] or the Deputy President?

Mr. CHAIRMAN: I understand that there has been a request from the President.

Clause 5A.

Mr. NARENDRA KUMAR BASU: I move that clause 5A be omitted. Sir, clause 5A introduces a new section into the Explosive Substances Act of 1908 and is intended to provide for enhanced punishment in certain cases under the Act. Section 3 of the Explosive Substances Act of 1908 deals with explosives injuring persons or property. Under the original Act such an offence is punishable with transportation for life. Section 4 deals with persons committing any act as aforesaid and also with persons who are found in possession of explosive substances, the maximum punishment for these offences under the Act of 1908 was transportation for 20 years. Under section 5 the making or possession of explosives under suspicious circumstances was punishable with transportation for 14 years. When this Act was last under revision by this Council in 1932, another section 5A was inserted after section 5 of the Act and it was added thereby that notwithstanding anything contained in sections 3, 4 or 5 if the offence under any of these sections is tried by Commissioners or by Special Magistrates the punishment should be transportation for life or for any shorter term.

Now, it is proposed in this Bill that subject to certain limitations any person who makes or is in possession of explosive substances under circumstances indicating that he intended that such explosives should be used for the commission of the offence of murder shall be punished with death. Sir, my submission is, in addition to the grounds which I urged before the House yesterday in connection with the previous clause, that the Home Member has really made out no case why the sentence of death should be inflicted in a case like this. We were told solemnly yesterday that the reason why an offence like this was not made punishable with death in the Penal Code was because at the time when the Penal Code was enacted there was not the background of this legislation which is terrorism. I submit that in saying that the Hon'ble Home Member really made, if I may be permitted to say so, a misuse of words. It is not the background that matters in this case—it is the forefront. In the forefront of this idea of legislation is abject terror. They are seeing red all the time and therefore they thought that the Bill ought to be made a red Bill. Otherwise there is no reason why this penalty of death should be provided deliberately for cases where no murder has actually taken place. It is deliberately provided for a case where a person is carrying in his possession or makes an explosive substance. Sir, we all know the difference between the preparation and the fruition. We all know that simply because a person has in his possession explosives which I take it was intended

to be used for the commission of murder—even then, I submit, there is absolutely no ground why such a person should not be given a *locus penitentiæ*. There is no knowing whether he would have proceeded in his intentions and in a case of that description to deprive a man of an opportunity of crying off from his intention is, I submit, the result—cannot but be the result—only of sheer stark terror. I submit that provision of this description, as has been pointed out in connection with the same provision in the previous clause, is far less likely to be deterrent and is far more likely to goad the victim—I mean the victim of a section like this—to finish up his work by committing murder. If a man knows that he will be hanged for an inch as well for an ell, he will naturally think that it would be better for him to go the whole hog.

Sir, I submit that in that view at least a provision of this description is calculated to defeat its own end, and that added to the public indignation which it is bound to bring up, this provision is more likely to hamper Government in its attempt to deal more effectively with the terrorist movement than otherwise.

I shall not waste the time of the Council by reiterating the arguments which I put before the House yesterday in connection with clause 4. I submit that for all those reasons and for the reasons which I now advance this clause ought to be deleted.

Babu SATISH CHANDRA RAY CHOWDHURY: I have already said what I had to say about the death penalty in connection with clause 4. We have had no reply from Government in connection with the discussion of clause 4 that it is a piece of terrorism on the part of Government to terrify the terrorists. It has no other object than this. This penalty may not be used, but it is held out as a piece of terrorism. Now what I want to say in addition to what I said yesterday that if I were to choose terrorism on the part of Government and a terrorism on the part of terrorists—if I were to choose between Hitlerism on the one hand and terrorism on the other, I would unhesitatingly choose terrorism on the part of terrorists, although I detest terrorism from the bottom of my heart. The reason is simple enough. I have simple philosophy although the Hon'ble Member has placed himself above all law and philosophy. My philosophy is this: terrorism cannot have many friends in the land. When it grows widespread then it is no longer terrorism, it becomes a revolution. Terrorism burrows underground and thereby digs its own grave. It cannot of course be successfully combated by Government alone. It also requires law-abiding citizens to join hands with Government to kill this menace. Sir, the history of the world teaches us a lesson. Terrorism never succeeded in gaining political freedom for a country, though in an indirect way it has sometimes gained its object. We

and in Russian history that terrorism had been flourishing there since the sixties of the last century but it could not bring freedom until the Tsar of all Russia, under the advice of men like Rasputin and others, thought that by counter-terrorism they might put down the whole Russian nation. By that time a critical stage was reached and when the Government took to terrorism themselves—it is then and there only that the Tsardom was doomed. This is a simple lesson we have learnt from the history of Russia. We all wish that that history may not be repeated in India. We want very much to keep our political association with England and within the great Empire; but it must not be forgotten and however much we may wish on both sides to achieve certain ends by the application of certain methods, we may really be mistaken in them and we may overshoot the mark. It is on this ground, and on this ground alone, that I fear that the Government may be unwilling to be ready in creating such a state of utter despondency in the land that an undesirable state of things might come to pass which we all want to avoid. Sir, I would ask Government again to consider our suggestions and not to be in a hurry. I wish that Government would really listen to us. When our interest is really in jeopardy, there is no reason why we should not be listened to. One thing that Government can do is not to push on with this extraordinary measure which provides for death penalty for the possession of explosives. I have said under what circumstances the possession may be legally construed. I wish that Government would meet us half way and would agree that that provision is not necessary there. The existence of this provision is not vital to the Bill. Without it, the Bill will not become nugatory. From these reasons I appeal however from Philip the drunk to Philip the sober. Even if I fail to-day I shall not lose heart, but I shall again appeal to the British sense of justice and fair play and independence and civic freedom. With these words I support Mr. N. K. Basu's motion.

The Hon'ble Mr. R. N. REID: Sir, agreeing with Mr. N. K. Basu for once, but not by any means for the first time, I am not going to reiterate to any length the arguments which I advanced yesterday as regards this motion. We discussed exactly the same principles which apply to this amendment yesterday when we were discussing clause 4 of the Bill. I would only say this: that I deny and deny completely Mr. Basu's suggestion that this legislation has been put forward in a mood of abject terror. Nothing of the sort. Government introduced this legislation only after very careful consideration and not in a hurry.

As regards this clause itself—clause 5A—which seeks to impose the death penalty for offences committed against the Explosives Act under certain particular circumstances and by one particular class of people,

I would only say this: that whereas I hold that that penalty is appropriate in such cases for offences under the Indian Arms Act, it is even more appropriate in cases under the Explosives Act. For these reasons: "Persons may carry arms quite legitimately—and they are entitled to do so for self-defence or for other purposes—but nobody goes about for any legitimate purpose with bombs in his pocket. I beg, Sir, to oppose this amendment.

Mr. Narendra Kumar Basu's motion was then put and a division was taken with the following result:—

AYES.

Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Babu Kishori Mohan.
Chowdhury, Maulvi Abdul Ghani.
Choudhury, Maulvi Nurul Absar.
Fazlullah, Maulvi Mohammad.
Ghose, Dr. Amulya Ratan.
Hoque, Kazi Emdadul.
Karim, Maulvi Abdul.
Khan, Maulvi Tamizuddin.
Maiti, Mr. R.
Poddar, Seth Hanuman Prasad.
Rahman, Maulvi Azizur.
Raikat, Mr. Prasanna Deb.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Rout, Babu Noconi.
Roy Choudhuri, Babu Hem Chandra.
Samad, Maulvi Abdus.
Shah, Maulvi Abdul Hamid.

NOES.

Afzal, Nawabzada Khwaja Mohammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emadeddin.
Ashworth, Mr. C. G.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Bazir Uddin, Khan Sahib Maulvi Mohammed.
Bettamley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Cohen, Mr. D. J.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. S. S.
Edgley, Mr. N. G. A.
Ezaufji, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghose, the Hon'ble Sir Charu Chunder.
Ghaznavi, the Hon'ble Alda[Nawab Bahadur Sir Abdulkarim, Kt., of Dildar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Huque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Kasem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Maguire, Mr L. T.
Martin, Mr C. M.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Mullick, Mr. Mahanda Behary.
Nag, Reverend G. A.
Nandy, Maharaja Srie Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abder..
Ray, Babu Khetter Mohan.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saheswar Singh.
Roy, Mr. Surat Kumar.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Townend, Mr. H. F. V.
Williamson, Mr. H. R.
Williams, Mr. A. deB.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 23 and "Noes" 50, the motion was lost.

[At this stage Mr. Deputy President took the chair.]

Babu HEM CHANDRA RAY CHOUDHURI: I beg to move that in clause 5A in proposed section 5B, lines 2 and 3, the words "or has in his possession" be omitted.

Section 5 of the Explosive Substances Act already provides for punishment with transportation for a term which may extend to 14 years, in case a person makes or knowingly has in his possession or under his control any explosive substance under such circumstances as to give rise to reasonable suspicion that he is not making or does not have it in his possession or under his control for a lawful object. This proposed section 5A enhances the punishment of transportation for a term of 14 years to a death sentence and transportation for life. Sir, when I supported motions Nos. 15 to 17 yesterday, I mentioned that we may concede that any person who goes armed with the intention of committing murder under certain circumstances may be punished with a life sentence; but the offence of having in possession any explosive substance, though with the intention to commit murder, should not be punished with death because it may so happen that the person who has collected this explosive substance with the intention of committing a murder may change his intention afterwards and may prove to be a good citizen. I may also add that if any dishonest police officer wants to fulfil his grudge against anybody, it is very easy for him to prove that the person has explosive substance in his possession to commit a murder. The life sentence being inhuman in its nature, it should not be used in punishing even those who have in their possession any explosive substance. It is also a fact that these Commissioners entrusted with the trial of these cases may commit an error in some cases, and if in error anybody's life is taken, I think there will be no opportunity for correcting that error. So I hope the Government will accept this amendment because even under clause 5 the person who will have in his possession any explosive substance will be punished with transportation for a term of 14 years.

Babu KISHORI MOHAN CHAUDHURI: In cases where the consequence is the death sentence, we ought to be very particular about it. Simply to hang a man because something is found in his possession is an absurd proposition of law. The law is very jealous in considering cases where death sentence is to be passed. We have already urged our objection that the word "possession" has not been specifically defined, so we do not know what sort of possession is to be considered. This is not shown and the constructive possession may go against a person and if there is no satisfactory explanation—and in all cases it is not possible for a person to offer any satisfactory explanation —the consequence is very serious. If something is found in my house, in any part of it, I may not know anything about it, but even if I cannot explain how the thing came there and why it is there, for that this monstrous proposition of law, the penalty of death, is being provided. Without reiterating the arguments that were advanced against the previous clause yesterday, we have thought

over the matter very seriously and I think that this provision at least should be omitted, so that there may not be any miscarriage of justice, which may be the consequence in many cases. So my earnest request is that Government should consider that it will not be necessary to include these words. It is not so very necessary except to strike terror in the minds of the general public or any person concerned in this matter. Of course we know, Sir, that our suggestions will be of no use because the Government members, the European group and the nominated members are there and some of us are also there with the Treasury Bench, so our position is very awkward here. We have simply to make suggestions, knowing full well that our suggestions will be of no use. But as the matter is a very serious one, we think it our duty to point out to Government that these things are not necessary and that there will be no fear that the British Government he will naturally think that it would be better for him to go the whole support the amendment.

The Hon'ble Mr. R. N. REID: The mover of amendment No. 40 argued on lines which would do away altogether with the point of this clause which is, as we know, to add this enhanced penalty to an offence under the Explosives Act done under certain circumstances and by a certain class of people. He wants to leave out the words "or has in his possession" because the possession of explosives under unlawful circumstances is already provided for in section 5 of the Explosives Act, 1908. As a matter of fact section 5 was further amended in 1932 by section 5A which increased the penalty. However, it is obvious that Government cannot accept the amendment, because it does away with the whole point of the clause.

I wish to assure my old friend, Babu Kishori Mohan Chaudhuri, in his apprehension that this clause would be used to harass innocent persons who may have certain things in their house without knowing that such things are there, that there is no such real danger in it, because the clause has been drawn up in a very careful way. It only applies to a person who has in his possession explosive substances under circumstances indicating his intention to use those substances for the commission of a particular kind of offence. That means a great deal has to be proved against any accused before he is convicted.

Mr. NARENDRA KUMAR BASU: May I speak in reply to what the Hon'ble Member has said?

Mr. DEPUTY PRESIDENT: Generally the Hon'ble Member in charge has the last say, but you have my permission to speak.

Mr. NARENDRA KUMAR BASU: May I point out to the Home Member, because he seems to be inclined to listen to the arguments of Babu Kishori Mohan Chaudhuri, that as a matter of fact what Kishori Babu and other members are apprehensive of is not that innocent men will ultimately be hanged under the provisions of this section, if the amendment is not accepted, but that innocent men may be dragged by the police before a Special Tribunal on a charge under this section, if these words be not omitted, and thereby they may be harassed and have to incur expenses and suffer from the anxiety of a trial before a Special Tribunal. We are all aware and we have got to presume that the Special Tribunal will not convict a man unless the other elements that are in the clause are proved, but what Kishori Babu spoke of and what I want to emphasise and want to draw the attention of the Hon'ble Member to is: that unless these words are deleted, innocent men may run the risk of not only being prosecuted under this section but also being persecuted, and that is an aspect of the matter which I hope Government will take into consideration.

Babu Hem Chandra Roy Chaudhuri's motion was then put and lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 5A in proposed section 5B, line 2, after the word "has" and before the words "in his" the word "knowingly" be inserted.

I simply formally move the amendment, because I do not see any argument will be of any use.

The Hon'ble Mr. R. N. REID: Sir, all that I have to say in reply to the speech of the hon'ble member is, as I said yesterday, that I consider that the word "knowingly" is unnecessary, because the word refers to the intentions of the person concerned which are already provided for in this clause 5B. I beg to oppose the amendment.

The motion was then put and lost.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that in clause 5A, in proposed section 5B, line 4, for the word "indicating" the word "proving" be substituted.

Sir, I do not intend to reiterate the arguments put forward in connection with the consideration of a similar motion with respect to clause 4. I only want to add that if the word "indicating" remains in the clause as it is now, then the benefit of doubt which the accused gets under the present law will no longer be given to the accused prosecuted under this Act. The word "indicating" does not exclude doubt but the word "proving" as defined in the Indian Evidence Act

excludes the element of doubt, and where the element of doubt exists, the accused gets the benefit of it. Hence I propose that the word "indicating" be replaced by the word "proving."

The Hon'ble Mr. R. N. REID: I have nothing to add to the arguments which I adduced yesterday on the subject except that I discovered a precedent for these words, which were described as being so vague, in the Arms Act of 1878, to which some virtue may be attached. Section 12 of that Act reads thus:

"When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a licence, or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used for any unlawful purpose, etc., etc."

I merely mention that, because it does show that there is precedent for the use of this word "indicating" or words to that effect, and it is not put in deliberately in order to drag everybody into the net as we were told yesterday.

As to the element of doubt mentioned by the mover, if there is any element of doubt, I can tell him that in any case he may be quite sure that the court will take that into consideration and, as we know, the court generally gives the accused the benefit of doubt.

The motion was then put and lost.

Mr. DEPUTY PRESIDENT: I should like to take up amendments Nos. 46 to 55 together and have one discussion.

The Hon'ble Mr. R. N. REID: Will that cover 56 as well?

Mr. DEPUTY PRESIDENT: I think we had better take that separately.

Mr. P. BANERJI: I beg to move that in clause 5A, in proposed section 5B, lines 9-11, the words "with death or with transportation for life or any shorter term to which fine may be added or" be omitted.

In moving this amendment we have to adduce the same arguments that we had to use yesterday. It is a well-known fact that, as has been described in this House by many eminent lawyers, with the advance of civilisation punishment is always reduced. In all civilised countries the punishment which used to be given for certain offences, say, 100 or 200 years ago has now been reduced. But here instead of reducing it, it is sought to be increased by a Government which is claimed by

the Hon'ble Member to be a part of the civilised governments of the world. Although this Government claims to be a civilised government, I say that this Government is barbarous in view of the fact that it brings about measures which can only be brought by barbarous people. I do not see how the Hon'ble Member justifies his position when he says that he does not care either for jurisprudence or anybody. He wants us to face facts and states that in consideration of these desperadoes or terrorists or anarchists the sanctity of human life should not be respected. He said that they are out to do heinous crimes and he gave three examples as to how Government officials were murdered. We have oftentimes tried to bring home to Government that we know all these from the Government side, but the Government while taking photograph of the situation often neglected the other side. We have brought to their notice what the police and other officers of Government, through whom the law is administered, do in the countryside. In fact there is no law and order in the countryside; there is nothing but lawlessness and disorder. Government should try to make inquiries into these state of affairs and find out the root-cause of the murders. Mr. Jatindra Nath Basu said yesterday definitely that unless you go into the root-cause of the situation, mere passing of such measures or even more stringent measures will not solve the problem. Even if that step is taken by Government, Government will not be able to check these things as Mr. J. N. Basu has said unless the legitimate aspirations of the people are satisfied. Therefore it stands to reason when I say that it is not the intention of Government in any way to tackle the situation brought about by terroristic activities, but to put a stop to the movement of non-violent non-co-operation, a movement which aims at freeing the country from foreign subjection. That is the legitimate aspiration of the people and it is not the fault of the people if they entertain such an aspiration, for it is you who have taught them to think in that way by your literature, and by your promises from time to time. But what have you done? You have given so many promises but have not fulfilled them. The history of British administration in India, to use the words of an eminent man, is a history of broken pledges. If the people being dissatisfied now want to go against the Government, as Mr. J. N. Basu has pointed out, and say that it is certainly not we that are rebels but rather the other side—namely, the members of Government and the members of the Indian Civil Service—it is they who are really the rebels, for the simple reason that they always stand in the way of the fulfilment of these promises that have been given, you cannot blame them. That is the real grievance, as has been pointed out, and I endorse every word that fell from the eminent leaders of the country. But as it often happens, Government turn a deaf ear to all that has been said on the subject. Therefore it stands to reason that in spite of what Mr. Reid may say and try to convince us, Sir, we are not convinced in the least

for the simple reason that we know the state of affairs in the countryside. The Hon'ble Member is not acquainted with those facts: he knows only the Government's version of things. But we know the Government's version of things from Government members as well as the version of the people, and it has always been noticed that they can never rise to the occasion but have always tried to stop it by this means. That is his attitude to-day. What members of Government and the Indian Civil Service feel to-day is that if they satisfy the reasonable aspirations of the people their days are numbered. Sir, that is the whole situation. That being the case, I say to the Hon'ble Member—if you claim to call yourself civilised, then you should not by this legislation darken the face of your forefathers, who always cared for the sanctity of administration; theirs was the best constitution of the world and they were not only satisfied with their own constitution but they always tried to free the people of other countries also. As regards the non-official European group who have always in season and out of season supported the Government: what have they done by doing so? To use the words of a Londoner who was here some time ago the Indian Civil Service people have spoiled the fair name of Britain. With these words I move my motion for the acceptance of the House.

Dr. AMULYA RATAN GHOSE: I beg to move that in clause 5A, proposed section 5B, in lines 9 and 10, the words "with death or" be omitted.

Sir, I have already said that the sentence of death is a penalty which is not at all approvable by any civilised Government. Sir, if this penalty is retained it has been argued that the crimes will be lesser and lesser till at last they will stop altogether. I have already said that the desired effect will not be obtained if this penalty is simply retained in this clause. If these two or three words are retained, that is, if the death penalty is retained in this clause, I am sure that this country which was gradually and gradually coming to a condition of comparative peace than some time ago will again be thrown into the vortex of serious agitation, and peace and tranquillity which is somewhat in sight will disappear and again there will be so much unrest in the country that it will be difficult for Government to tackle it. The seriousness of the penalty in comparison with the offence is certainly a thing which is hateful to every man in this country. Meetings have already been held throughout the length and breadth of this province to protest against this Bill. Public meetings were held practically in every district to protest against this Bill. But the resolutions or opinions expressed in such meetings are going to be ignored. We have seen during the debate of the last two days that every leading member of this House was

opposed to the provisions of this Bill and even to the object of this Bill. Sir, in connection with a previous clause (I think it was clause 4), although Government had many members on their side to vote for them in the lobbies, but there were none for them except a nominated member and a Khan Sahib to support them with speeches and practically all the leading members from the elected groups were in the lobby in opposition for the deletion of the clause. If these things are not taken into consideration and in spite of these facts the Hon'ble Home Member says that it is Dr. Ghose's opinion and not public opinion, then I would again warn the Hon'ble Member that he will be placing the whole country under an agitation which was hitherto unknown in Bengal and which can only be compared with the conditions which prevailed in Ireland. Sir, the advisers of the Government who are helping the Government with their votes or some other ways, I tell Government that they are not the real friends of the Government. Those who have the courage of conviction to tell the true facts in the face of Government—they may be unpalatable at present, but in the future Government will realise that these men are their real friends. We are fighting desperately against Government passing these ruthless measures not because we are opposed to peaceful Government, not because we want terrorism in the country, but because we want to save the country from the hands of terrorists, whether those terrorists be the Government themselves or the terrorists of the country. Sir, terrorism we want to oppose; and in doing so, I think that the line we have chosen is the best line: and we ask Government to condescend to accept these facts and to change their attitude even now and to listen to the wise counsels, not only of the people whom they consider to be oppositionists, but of even their friends the liberals. During the debate of the last two days I am astonished to see that Government have not taken any heed of the opinions expressed by the leaders of public opinion in this Council. If the Government go on in this way, I am very much doubtful about their success: not only am I doubtful, but I must say that it will produce a very baneful effect upon the country. I, therefore, support the motion moved by Mr. P. Banerji and also commend my motion to the acceptance of the House.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I support the amendment moved by my friend, Dr. Amulya Ratan Ghose. The Hon'ble Member in charge of the Bill has asked us to consider this measure on the basis that there is a background of terrorism. To my mind, Sir, the background is not one of terrorism but of a policy of retaliation. Sir, I shall justify my remark by quoting or referring to the speech of Mr. Thompson, practically the only supporter of the Government in this matter. Mr. Thompson admitted that this measure was more or less of a barbarous nature. He admitted that frankly, and knowing it to be such, he has lent his support. Sir, I am not surprised

at his attitude, I could not expect any other attitude after the speech delivered by the Hon'ble Mr. Reid yesterday. The Hon'ble Mr. Reid—I do not know whether willingly or unwillingly, but it was certainly the effect of his speech—tried to inflame the minds of the British group in this Council. He referred to the murder of Mr. Burge, he referred to the outrage at Pahartali in Chittagong and similar other instances——

The Hon'ble Mr. R. H. REID: And the murder of an Indian officer.

Mr. SHANTI SHEKHARESWAR RAY: That was the most objectionable attitude on the part of one who occupies the high office of a Member of the Executive Council of Bengal. It is quite natural that the passions of the British community in Bengal should be exercised over these dastardly outrages in Bengal. If feelings are inflamed, if they call out for vengeance, if they call out for retaliation, and if they lend support to barbarous measures, I can understand that. Perhaps that would be the feeling also of the members of the Hindu community if they are exposed to such outrages by members of another community. That is explained and an allowance should be made for that. But what justification has a member of the Government who is expected to hold the balance even between the different communities in the land to be carried away by such feelings? He cannot forget for the moment that he is not a Britisher but in his speech yesterday the Hon'ble Mr. Reid forgot that, and I say, Sir, that he lowered the standard of administration in this country.

Mr. DEPUTY PRESIDENT: Mr. Ray, would it not be better to confine yourself to the amendment instead of going into a full discussion of what happened yesterday?

Mr. SHANTI SHEKHARESWAR RAY: I submit to your ruling, Sir, and I will not go into it any further. Now I shall try to examine the proposal on the claim made by the Government that it is a civilised Government. Sir, has there been any such measure advocated by any other civilised Government? Can he quote any such instances? I shall pause for an answer. Sir, it could never be justified by any standard of present-day civilisation, except where feelings run very high. Even in civilised countires and in civilised governments, there may arise situations for the time being when they may be inclined to abandon the normal standard of administration, but nowhere you will find such standard of administration has been permanently put on the statute book. Here, you do not advocate this as a temporary measure. You ask our support for a permanent provision in the laws of the land. I would ask the Hon'ble Member in charge of the Bill to examine the question from the standpoint of

civilised government, and if the answer comes to him that it is sanctioned by that standard, then and then only he should press for a provision of this nature, and in that case this provision should not be extended to the terrorists alone as that term has not yet been defined, but to other cases of a similar nature also. Then I can understand the sincerity of the Government in the matter. May I ask, is a murder committed by an individual under circumstances of great brutality less heinous than a murder committed by the terrorists? Is the sufferings of the members of a murdered man less acute than the members of a murdered Government servant? Does the Government of Bengal justify that when in the course of a dacoity or in the case of a premeditated murder that remains undetected and unpunished, the feelings of the aggrieved party is less acute than that of the members of the family of a murdered Government servant? If you are going to extend this protection by making provision for such measures with a view to stop such murders, what is the reason that withholds you from extending similar protection in connection with private individuals? May I point out that what is happening to Government servants to-day, may happen in the case of Hindus, it may happen in the case of Moslems and it may happen in the case of non-official British community. But do you feel so hard, do you feel so much excited, do you feel so much agitated when a Hindu is murdered and there are scores of such murders that are happening in Bengal to-day? You look on more or less unconcerned; heinous crimes go on unpunished, you go on looking unconcerned in your selfishness, in your cowardice, and in your panic you enact these measures.

Mr. C. C. MILLER: Sir, in speaking in opposition to this amendment, I would like to say at the outset that while I find myself perfectly able to understand the remarks delivered by the Hon'ble the Home Member, I find myself entirely unable to understand those remarks as interpreted or misinterpreted subsequently by other members of the House. We have, in this House, one permanent official member who occasionally delivers his thoughts in Italian and German, and we also have, I fear, some prominent non-official members who occasionally deliver their thoughts or their versions of other people's remarks in Double Dutch. Now, Sir, I have heard no new arguments advanced in support of this amendment, but I have heard the old argument put forward in various forms. It is to the effect that the introduction of this legislation which some call repressive and which one might call drastic is due to the failure of the Government and the police to cope with the menace of terrorism. Sir, let us in this House be honest with ourselves. It is not due to the failure of the Government or the police: it is due to the failure of the people of Bengal to cope with terrorism that renders legislation of this sort necessary. We have been asked for a definition of the word

"terrorism." Personally, I should say that the terrorist was one who by methods of secret conspiracy and violent crime wanted to achieve his end and defy law and order. Terrorism is not limited to crimes against the Government and indeed there is every sign that it is expanding against all ranks of society. Let it not be denied, Sir, that the events of the last four or five years form a chapter of blood and shame in the history of Bengal. If at the outset all leaders, whatever their caste or creed, and in particular the leaders of that caste and creed from whom these misguided youths have sprung, had come forward and stated boldly and clearly that murder was a thing vile and detestable, unjustified by the laws of God or man, no methods of secret conspiracy could then have made headway against the Government of Bengal with the people of Bengal assisting the Government. But what happened in effect was that our leaders left the Government and the police to fight their battle alone. Nay, more than that, in the earlier stages of this scourge an applause of terrorism was heard on every side—applause disguised by verbal sophistry, applause which dishonestly contended that the motive was honoured and not the crime, and so the young men of Bengal, and even the young girls of Bengal, committed murders and the greybeards clapped their hands or were silent through fear.

And so through a combination of bitterness and apathy and a complete lack of the thing known as public opinion of which we have heard so much and seen so very little, the poison has spread throughout Bengal. You cannot control violent crime or believe that it will limit itself to one channel. Political murder to-day is general murder to-morrow, murder for wealth, murder for revenge, murder for lust, and it is to check this and to intervene now at long last before it is too late that I call upon the members of this House to refuse their support to the amendment which would greatly weaken an altogether necessary Bill. Sir, it is true enough to say that the evil which men do lives after them, but is it not equally true that while men live they may realise that they have done evil and strive to undo it?

Mr. NARENDRA KUMAR BASU: In rising to support the amendment moved by my friend, Dr. Amulya Ratan Ghose, I shall not take a leaf out of the book of the previous speaker and indulge in concentrated manuscript venom. I submit, that at last the Government of Bengal has found a champion in Mr. Miller. Saul among the prophets! Mr. Miller has risen from the rivers of Bengal to give to the Government of Bengal that modicum of good sense of which the manuscript eloquence we have just listened to is a pattern. Sir, I am not going in my remarks in support of this amendment, to travel far beyond the four corners of the amendment and to speak of the general principles of the Bill as the previous speaker has done. But I shall ask him to consider that for the time being even in this House the Britisher, the

non-official Britisher for the matter of that, need not forget his own language, his own mother tongue. It is true that we are foreigners and do not understand the intricacies of the English language but the Britishers, at least those who are here as Britishers, they ought to remember their own tongue, and when a person like the last speaker gets up and says that it is on account of the dishonesty of the people of Bengal that terrorism has not been exterminated from the land, I submit——

Mr. C. C. MILLER: On a point of order, Sir. I did not use that expression.

Mr. DEPUTY PRESIDENT: That is not a point of order, it is a personal explanation.

Mr. NARENDRA KUMAR BASU: I took his words in writing Sir. I am not a stenographer. But he did say that if the people of Bengal had not failed to be honest and had not given applause to the deeds of the terrorists while dishonestly praising their motives,—he said that the people of Bengal dishonestly applauded the motives of the terrorists when they had committed their foul deeds and thereby encouraged the terrorists, and I do submit that he ought not to have used and would not have used the words if he had known his own language. I know that British members of this House are apt to forget the implications of their own language and they use language which they would be ashamed to use outside this House or in any other capacity. But I do submit that so far as the sentiments of the last speaker are concerned, the Home Member, if he were to take the hint, might have had a Bill of one clause, that whenever a person is arrested by a police officer not below the rank of a constable on the charge of being a terrorist he ought to be hanged at once. That would have sufficed and that is really the sort of thing that we are in this Council told in all seriousness to expect from all these honest people who come and support the Home Member. One of the arguments that were advanced, I do not quite remember by whom, in opposition to the deletion of the death penalty in another clause was that while the death penalty was one of several alternative sentences a court is not bound to inflict such a sentence in each case. As we were told yesterday, the best legislators, at least those who propose to be legislators, are those who do not know the law as it at present stands. Probably a knowledge of law is a defect when you are making new laws, because I find that in this House people take credit that they do not know the law when they are making laws. Well, the Criminal Procedure Code, section 367, clause 5, says that "if an accused is convicted of an offence punishable with death and the court sentences him to other punishment other than death the court shall state the reason why the sentence

was not passed." I submit, Sir, all that this means in plain English is that the passing of the sentence of death is obligatory and that the non-passing of such a sentence has got to be explained by the Judge or the tribunal that passes the sentence. The Government of Bengal has no excuse now for not knowing the law. They have amongst them a gentleman who was until lately the head of the judicial administration of the province, and I am absolutely surprised that the Home Member did not ask for an exposition of the law from his righthand neighbour. There is no excuse for the Hon'ble Home Member not knowing the law, and I submit that this being so it is very easy for him to know the law. He says that he is not a lawyer and does not know the law and cannot give legal explanations. I submit so far as the death penalty is concerned, it is even more objectionable in the case of clause 5A than it was in the case of clause 4, because clause 4 talked of going "armed with a pistol or having firearms in his possession or under his control, under circumstances indicating that he intended that such firearms....." Here you have nothing about any person having explosive substance in his possession. Sir, we all know that people, especially in this part of the world, make explosive substances during a *Dewali* festival and also during the *Sobrath*. Well, it is very easy to allege that human life may be destroyed by an explosive so made and there is nothing easier for a dishonest policeman than to make out circumstances indicating that such a person had that intention and therefore even though the court, the Special Tribunal, may find out in the long run that the intention was not present, here is a person who may be harassed and who may have the sentence of death hanging before his eyes as a punishment inflicted upon him if he were *challaned* under this section. I submit that it is not fair either to the accused or the prosecution that the sentence of death should be retained in this clause and that nothing would be lost by Government accepting this amendment.

The Hon'ble Mr. R. N. REID: Sir, I think this debate has moved rather far away from the ten amendments which we have got before us at the present moment. The first amendment which we discussed is No. 46 by Mr. P. Banerji to the effect that the words "with death or with transportation for life or any shorter term to which fine may be added" be omitted. Mr. Banerji supported this motion with a long speech, mainly a tirade against the Indian Civil Service, and I do not propose to answer that and I do not suppose it would have the least effect on Mr. Banerji if I attempted it. As to the amendment itself it goes to the root of this clause and I must oppose it. I will not repeat the arguments made earlier in the day about this and to which the opposition gave their replies yesterday. Amendments Nos. 47 to 55 are to the effect that in clause 5A, proposed section 5B, in lines 9 and 10, the words "with death or" be omitted. There again the same

arguments apply. We heard them yesterday, we heard them the earlier part of to-day and I do not think we need go into them much further except to repeat what I said before that the purpose of this clause is to add an enhanced penalty for crimes committed in contravention of the Explosives Act by a certain class of people in circumstances which indicate the intention of committing the crime of murder. I submit that this is a reasonable punishment to add to that clause of the Explosives Act and it may be a deterrent. Finally, I do not intend, to use the words of Mr. Shanti Shekhareswar Ray, to lower the tone of this debate by following him into a detailed reply to the remarks he made about a variety of subjects to which he referred.

Mr. SHANTI SHEKHARESWAR RAY: Because there was no reply to give.

The Hon'ble Mr. R. N. REID: I thank the gentleman for his suggestion. I beg to oppose these motions.

Mr. P. Banerji's motion was put and lost.

Dr. Amulya Ratan Ghose's motion being put a division was taken with the following result:—

AYES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Bahah, Maulvi Syed Majid.
Banerji, Rai Bahadur Roshab Chandra.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Babu Kishori Mohan.
Chowdhury, Maulvi Abdul Ghani.
Choudhury, Maulvi Nural Absar.
Dutt, Rai Bahadur Dr. Haridhan.
Fazlullah, Maulvi Muhammad.
Ghose, Dr. Amulya Ratan.
Gupta Mr. J. N.
Hakim, Maulvi Abdul.
Hoque, Kazi Emdadul.
Karim, Maulvi Abdul.
Khan, Maulvi Tamizuddin.
Maiti, Mr. R.
Momin, Khan Bahadur Muhammad Abdul.
Qasem, Maulvi Abul.
Raikat, Mr. Prasanna Deb.
Ray Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Rout, Babu Hoseni.
Roy Choudhuri, Babu Ram Chandra.
Samad, Maulvi Abdus.
Shah, Maulvi Abdul Hamid.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Armstrong, Mr. W. L.
Ashworth, Mr. C. G.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Barma, Rai Sahib Panchanan.
Bazir Uddin, Khan Sahib Maulvi Mohammad.
Bettenley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Akhmazzaman.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kanilal Kumar.
Dutt, Mr. S. S.
Edgley, Mr. H. C. A.
Faruqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghose, the Hon'ble Sir Charu Chandra.
Ghuznavi, the Hon'ble Alduj Nawab Bahadur Sir Abdulkarim, Kt., of Dhaka.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Kasem, Maulvi Abul.
Law, Mr. Surendra Nath.
Magahy, Mr. L. T.
Mallik, Mr. G. M.
Miller, Mr. C. C.
Miller, Mr. L. S.
Mullick, Mr. Mukunda Behary.

Haq, Muhammad B. A.
Handy, Maharaja Sris Chandra, of Kasimbazar.
Hashimuddin, the Hon'ble Mr. Khwaja.
Horton, Mr. H. R.
Rahman, Mr. A.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-.
Ray, Babu Khetter Mohan.
Ray Chowdhury, Mr. K. S.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Sinha, Raja Bahadur Bhupendra Narayan, of Rashipur.
Sumner, Mr. G. R.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deG.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 28 and "Noes" 57, the motion was lost.

Mr. P. BANERJI: I beg to move that in clause 5A, in proposed section 5B, line 13, for the word "fourteen" the word "ten" be substituted.

As I have said before, the punishment for an offence like this was originally 3 years. While we expected that with the increase of civilisation punishment for the offence would be diminished, we find that it is going to be increased to capital punishment, and this I consider to be a crying shame for any civilised government. The minimum punishment provided here is fourteen years. It is quite possible that in most cases innocent persons will, in the words of Mr. Basu, not only be harassed but will actually be punished. I do not think the Hon'ble Member can give us any guarantee that innocent persons will not be punished. The Hon'ble Member has said that the wording of the clause has been so made that there is no ambiguity. We consider that the wording has been kept absolutely vague. No proper direction has been given to the judiciary. Therefore I say that this sentence of fourteen years should be reduced to ten years.

The Hon'ble Mr. R. N. REID: I can only conceive that the mover of this amendment has put it on the paper for the purpose of wasting the time of the Council.

Mr. P. BANERJI: Question. The whole Bill is a waste of time.

The Hon'ble Mr. R. N. REID: Well, if he considers the whole Bill to be a waste of time, I suggest that he should cease to attend the House. That being my view, I do not think that I would be justified in further wasting the time of the Council in discussing the amendment. I beg to oppose it.

The motion was then put and a division claimed.

Mr. SHANTI SHEKHARESWAR RAY: On a point of order, Sir. On behalf of this group I would like to make a submission and it is

this. The Hon'ble Member in charge of the Bill has just now insinuated that a member of the Council was wasting the time of the Council by moving this amendment. Unless he withdraws that remark, it will be our painful duty to call for a division on every amendment.

Mr. DEPUTY PRESIDENT: That is a matter of opinion.

Mr. P. Banerji's motion was then put and a division taken with the following result:—

AYES.

Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Chaudhuri, Babu Kishori Mohan.
Choudhury, Maulvi Nurul Absar.
Fazlullah, Maulvi Muhammad.
Ghose, Dr. Amulya Ratan.
Hakim, Maulvi Abdul.
Hoque, Kazi Emdadul.
Maiti, Mr. R.
Ray, Mr. Shanti Shekhareswar.
Rout, Babu Nosoni.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.

NOES.

Ali, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur, Maulvi Emaduddin.
Ali, Mr. Akaf.
Armstrong, Mr. W. L.
Ashworth, Mr. C. C.
Bai, Babu Lalit Kumar.
Bai, Rai Sahib Sarat Chandra.
Banerji, Rai Bahadur Keshab Chandra.
Barma, Rai Sahib Panchanan.
Basiruddin, Khan Sahib Maulvi Muhammad.
Bose, Mr. C. M.
Bottomley, Mr. J. M.
Chaudhuri, Khan Kadahar Maulvi Allimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Nafizar Rahman.
Chowdhury, Maulvi Abdul Ghani.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. C. C.
Dutt, Rai Bahadur Dr. Haridhan.
Edgley, Mr. H. R. A.
Ghuznavi, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. N.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkarim, K.C., of Dilduar.
Gilchrist, Mr. R. N.
Gleeding, Mr. D.
Gupta, Mr. J. N.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Miller, Mr. C. C.
Mitter, Mr. C. C.
Momin, Khan Bahadur Muhammad Abdul.
Mullick, Mr. Mukunda Behary.
Nag, Reverend N. A.
Nandy, Maharaja Sris Chandra, of Kasimbazar
Nazimuddin, the Hon'ble Mr. Khwaja.
Norton, Mr. H. R.
Quasem, Maulvi Abul.
Raheem, Mr. A.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-.
Ray, Babu Amulyadhan.
Ray, Babu Khetter Mohan.
Ray Chowdhury, Mr. R. C.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Babu Jitendra Nath.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. R.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rabati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. K.
Summer, Mr. G. R.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. McK.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 14 and "Noes" 72, the motion was lost.

The motion that clause 5A stand part of the Bill was then put and agreed to.

(The Council was then adjourned for 15 minutes.)

(After adjournment.)

Clause 6.

Mr. DEPUTY PRESIDENT: If the House has no objection, I would take up amendments Nos. 57-60 and 61-66 together and have one discussion on them.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that clause 6 be omitted, and also to move that in clause 6, proposed section 2A be omitted. That is to say, if the first motion fails I would insist on the second.

Sir, the acceptance of clauses 4 and 5A brings us face to face with the reality that these drastic provisions are a part and parcel of the law of the land. In spite of our best efforts we have not succeeded in dislodging Government from the position which they took up to see those provisions through, although there is little cause for triumph on the part of Government, considering the fact that once they make up their mind they have an easy victory assured to them. However, Sir, our political creed is not to fly away from the law or to disown law but to see that once enacted it is not diverted to wrong ends, and that it is not abused so as to defeat the very object which it has in view. Sir, consistently with that creed I think it is our bounden duty to offer a stout opposition to the enactment of the press provision of the Bill. Sir, I expect a very patient hearing, for this part of the Bill I consider to be most important from whatever point of view it may be looked at. Therefore, I expect a patient hearing from the Hon'ble Member of the gentle arguments which I propose to use, arguments based on pure logic of facts; and I can assure the Hon'ble Member that if he can give me a reply which I consider to be reasonable, I am prepared to reconsider my own views on the matter. When drastic laws are in operation for the good of the people, and I for one do not deny that at times drastic laws may be necessary, and even a national government in the true sense of the term may find itself faced with problems when it may consider drastic action to be necessary, if those drastic laws are for the good of the people and not for the protection of any particular class, in that case I submit that a benevolent autocrat has to keep a vigilant eye that those measures may not be abused in their operation, and that they may not be made a pretext for committing unnecessary oppression on the innocent and law-abiding by the agents of the Government. Sir, the effect of investing a man with larger and unlimited powers is to make

him feel like an autocrat, and the consequent temptation to abuse of power is too great for an ordinary mortal to resist. I think even the honourables of the Government cannot escape from that position entirely. I cannot myself escape from such temptations when I find in a particular matter that my powers are practically unlimited. This is human psychology, and this is a state of things which, I am sure, nobody in this House will venture to deny. It is a mighty difficult task for any well-meaning person to work a drastic measure and yet keep people convinced of his good intentions. In that respect the Government has got our sympathy in the fullest measure. It becomes possible only to keep oneself, or the Government itself, above suspicion when the Government is prepared to check and punish all transgressions on the part of their agents ruthless even as they would apply the law ruthlessly against those for whom the law is intended. It is regrettable that the attempt to hide and deny the faults of the subordinate staff, even when proper complaints have been made, by the Government in recent times has been a greater cause of public discontent and want of public confidence than in the drastic laws themselves. I would ask the Hon'ble Member to search his own heart and to see whether Government can claim perfect exemption from this particular charge that has been laid against the Government now and again. The Midnapore inquiry report and the other whitewashing reports are the instances in point. I will not dilate on them. It is not my aim to expose the Government to-day, but what I want to do is simply to point out to them wherein the pitfalls lie, wherein the mighty and the wisest slip. Sir, if the general proposition which I have just laid down is correct, it is necessary in the opinion of the Hon'ble Member that when drastic laws are in operation, perfect vigilance and watchfulness on the part of the benevolent autocrat—as I characterise the Government—are necessary. If you do that successfully, then you can infuse confidence, and then only you can stand with a clean hand and say—I did it with the best of intentions for your good and for your good only although I might have erred. Nobody can then charge with false motives and false intentions the powers that be. If that proposition of mine is correct, then what follows as a corollary is this: that when these drastic laws are in operation, Government has got to keep all sources of information leading to the exposure of abuse of power on the part of the executive. They must keep all these sources open for its own enlightenment and action. What is most essential in this connection for the Government of the land is to keep the freedom of the press to bring to light all facts showing how the laws are being operated. That freedom must be kept intact and untouched for the Government's own sake. The press certainly, and I do not deny it, is responsible for the dissemination of correct information. They are a power for good as well as a power for mischief. Their responsibility is very great, although their task is beset with difficulties and their failure in this respect may be properly

checked,—nobody can grudge it. But why do you stop them giving out any information whatsoever of a particular class? That is a pertinent question with which we are faced. When we are going to have these drastic provisions as a part of the law of the land, we can very well put to you, why do you stop the press giving out correct news, no matter whom it affects? What is the object and meaning of this? Why do you put out the only light that is shining in this cimmerian darkness because you can get light and enlightenment from no other quarters? Why do you encourage the mists of false rumours to envelop the land and do the mischief which rumours on political matters and political questions may really do? I need not remind the Government at this stage whether the historian has not recorded that the Sepoy Mutiny was the result of false rumours. If it is a historical fact, I do not think it requires any argument to prove that as a matter of fact these rumours should not be allowed on any account to gain possession of the minds of the people. When you shut out the press, when you stop them from giving out information, do you not thereby encourage and stimulate false rumours gaining ground? You cannot fight these rumours even with your costly Publicity Department whose labours I may say are very often lost. You can fight them successfully with the help of a responsible press, a press on which you are prepared to rely, between whom and yourself no confidence has been lost. You want to paralyse the press completely by these provisions and thereby refuse to accept the challenge which some people may throw out to you that your laws will be abused in their operation. It is not a matter as to what your intentions are. What answer have you to give to those who say that with your preamble this suppression of terrorism is only a make-believe and only a meaningless phrase. What you really mean to do is to crush the spirit of nationalism in the land, to crush the spirit of patriotism in whatever innocent shape it exists. How do you reply to that charge when you really refuse to get information as to how the law is going to be worked. It is a serious question, and I appeal to the Hon'ble Member that he will seriously consider it whatever might have been his preconceptions, whatever might have been the idea with which he came here to discuss the Bill. The Hon'ble Member will probably tell us,—why, there is the aggrieved party to complain before the court, and before our executive officers the doors of which are not closed and that they can go and lodge their complaints there. If you will say that, my reply will be that you really treat us like children, because it ought to be known to you that if they really go beyond their doors, the executive may lose their heads, being invested with unlimited powers. If they can overawe a particular individual, they can also overawe all those who are connected with that individual; and, therefore, they may make it impossible for the aggrieved party to complain before the proper authorities. It is not a hypothetical proposition that I really lay down, but we know it from our own experience that such

things have happened. As a matter of fact, nobody has ventured to come out before courts to complain. If I may be permitted to illustrate the proposition by a recent fact, I may tell the case of Himangsu Bose, otherwise known as Chotka, of Mymensingh. That case is of course still pending but the facts are really too shocking for any ears. He is not a political offender that the police had to deal with, but the police had to deal with a man suspected of committing an ordinary crime. The police entered his house at night and pursued him. He was in perfect health as the certificate of the Civil Surgeon will go to show. He was dragged to the *thana* and beaten mercilessly and on the following day——

The Hon'ble Mr. R. N. REID: On a point of order, Sir. May I inquire whether this case is still *sub judice*?

Mr. DEPUTY PRESIDENT: If it is still *sub judice*, I think the hon'ble member is out of order and should not refer to it.

Babu SATISH CHANDRA RAY CHOWDHURY: The decision of course is not out yet, Sir. But may I not refer to the finding of facts already given by the learned Judge who heard the case?

Mr. DEPUTY PRESIDENT: If the matter is *sub judice*, you should not refer to it.

Dr. AMULYA RATAN GHOSE: On a point of order, Sir. On a previous occasion, the Hon'ble the President, while we were discussing the Bengal Municipal Act, 1932, had ruled that facts of the case which were beyond any controversy could be stated in the Council even if the case was *sub judice* without going into the merits of the case.

Mr. DEPUTY PRESIDENT: The facts of the case have not yet been heard, as far as I understand, from the hon'ble member.

Babu SATISH CHANDRA RAY CHOWDHURY: I bow to your decision, Sir. But the facts mentioned in this case are a concrete example of a case which I cited in order to illustrate my proposition. But the proposition is this, it is for the Hon'ble Member to accept it or refuse it. When excesses are being committed by a police officer and go beyond the dictates and intentions of the law, it is very easy for him to cow down a man who would come really to make a complaint. It does not require any illustration. It is common sense and everybody here knows from his own experience that in such cases there are not many bold spirits who would come forward with complaints before the court. If you say that we are cowards, my reply is that you have made us cowards like this, and any class of people in our position would

betray that amount of cowardice. What I was going to argue is that under such circumstances it becomes your bounden duty having enacted the law to see that the law in operation is not abused or misused. If that be the position, the press must be allowed full freedom in order to disseminate information regarding the conduct of officials. Why should you be afraid of this information getting abroad? If you find as a matter of fact that the information is correct, you should welcome this method of opening your eyes, and let the officials know that by their actions they are betraying the Government, and that they must correct their faults. If you do that, you will carry the whole country with you. If you really do not do that, then you really show that your intentions are far different from what the preamble makes it out to be. That is the reason why in the interests of the Government, in the interests of the party which is out really to suppress terrorism and crimes by means of drastic laws, you should see that the member is allowed full freedom to act as your friends and the friends of the people. I will not dilate further on this, as I do not wish to tire the patience of the Hon'ble Member. I want him to be patient and to seriously consider this part of the Bill. I will therefore be as brief as I can. My second reason is what I see in the preamble of the Press Emergency Act is this: "Whereas it is expedient to provide against the publication of matters inciting to or encouraging murder or violence." This object of providing against incitement to murder or violence is a thing which nobody can take exception to; the press ought not to be encouraged to incite or encourage murder. If the press ever did it or not, that is a different question. So far as the preamble is concerned, I think nobody can take exception to that. But what are we now out for? Although we are amending the preamble of the Press Emergency Act, we are travelling far away from that preamble and the object of the Bill. What is proposed in this provision is that the Local Government may stop the press publishing any class of information which in the opinion of the Local Government tends to create, etc. Well, here is a homeopathic dilution of 200,000. When I read this provision, I thought that the framer was an expert in homeopathic science. One goes into a dreamy, misty land, and does not know whether one is listening to music, and one's soul is turned and one is brought back to reality. When reading this provision I felt I was being taken off my feet in a land most beautiful, in an atmosphere pure and serene and being carried far far away from the preamble. I leave it to Mr. N. K. Basu to say whether the law is at fault or not; I leave it to him to find it out in the High Court, but as a man with common sense I see that you are really abusing the power that was given to you. The Government of India enacted the press law under certain conditions and with certain objects, which, as I have said, personally I see little to find fault with. But the Government of Bengal has taken the opportunity, with the permission of the Government of India, to

abuse the preamble [illegible] and introduce surreptitiously an emergency Act something which the preamble does not cover, something which common sense would say does not belong to the Act.

Now let us really examine what you want the press to do. They must not create an atmosphere favourable to the gaining of adherents to the terrorist movement. Now, Sir, can it be asked with any show of reason that the publication of information, however terrible such information may be—supposing there is a police officer who has committed great *zoolum*. This is published in the press, will this publication create an atmosphere for gaining adherents to the terrorist movement? Supposing after getting that information, you, as the member in charge tell the official, "Here is the information published in the press, I want your explanation." Will this not be a good thing? On the contrary, if I really voice the sentiments of the people, if you say that an atmosphere is being created, then in spite of all my caution I may say that I may be swept away from the ground I proposed to occupy. I may say that Government is responsible in this country for creating an atmosphere in which terrorism is responsible for gaining adherents. When you impose collective fines and tax on all Hindus and Hindus alone. Hindus who, in spite of what one member of the European group said this morning that people of Bengal are responsible for the flourishing of terrorism, and in spite of that I say without fear of challenge that it is the Hindus who are still propping up the Government to-day, the Hindu *zemundars*, the Hindu landlords who are making large sacrifices for the Government are really propping up this Government to-day; but still the Government will never loose an opportunity of coming on the Hindus, not only the Hindus, but the Muhammadans as well, and still you say that the people of Bengal are responsible for terrorism. You ought to be careful, the Government has need of caution; do not drive us to a state of desperation from which we shall have, the humblest, the weakest, and the lowest, to cry "save us from this Government"; take us away from our adversity; we all stand on the same platform——

Maulvi TAMIZUDDIN KHAN: On a point of order, Sir. Is the member allowed to speak for more than 15 minutes? He has already spoken for 23 minutes.

Mr. DEPUTY PRESIDENT: He is entitled to speak for 30 minutes because he is moving a motion.

Babu SATISH CHANDRA RAY CHOWDHURY: I must give credit to the Hon'ble Member that he has not been impatient with my speech. There are people amongst us who are impatient of the freedom we enjoy. To that extent our sympathies go to the Government. To

that extent we welcome the presence of the British people here. We are tied to the British people by ties indissoluble and we hope and expect that these ties will continue till we can all stand on the same platform, and until we can all say "this is my land, my mother land." But this is digression, certainly. Then I say that the position is that I do not think that Government is a conscious party to cause that atmosphere; some will say that the Communal Award is premature, and is really calculated to create this atmosphere. I do not say that Government is consciously doing it; I do not say that Government is creating an atmosphere for terrorism, but there are conscious acts and unconscious acts. When you want to control terrorism, you must be cautious. But it passes one's comprehension how you can say that the publication of correct information is really a disservice. The press should be given full freedom, so that the Government can really be informed of what is actually happening. By this provision with which you seek to control terrorism, you have really weakened our hands. Therefore, I appeal to the Hon'ble Member to accept my motion.

Mr. NARENDRA KUMAR BASU: I rise to support the amendment. As a matter of fact members will have seen that I myself gave notice of a similar amendment. I am conscious and do say that I did it consciously to waste the time of the House. I know, Sir, that any opposition to a Government measure is bound to be a waste of the time of the House. I do know that, as I have repeated several times, the Hon'ble Home Member is conscious of the strength of his position and whatever the fate of amendments may be in other places, not very far away from this Chamber, when it comes to an amendment in this Chamber, it is always a waste of time, and I acknowledge that it must be ordinarily very tiresome to the Hon'ble Member who has got a following behind him to cry out "Hallelujah," and to answer their master's voice, it must be very tiresome for a man of that position to have speeches in opposition to his dictum. But still, Sir, a non-official member who felt that he was helping the Government to achieve its declared object would be failing in his duty if he did not point out that the provision that the Government was contemplating was not only unlikely to achieve the object, but that it was probably something which the Government would not do if the difficulties were pointed out to them. Sir, we are all familiar in life in the courts and elsewhere of the great differences between people as to the meaning of words. In fact the House will remember that when this piece of paper, on which certain sections of the Press Act, as it stands at present and as it is proposed to modify, was circulated amongst members with the permission of the President, a certain member, who I take it has not during his long sojourn in this country forgotten his mother tongue, got up and said that this was a copy of printed arguments in place of the arguments which were addressed by word of mouth. There were even people

who are supposed to know their own mother tongue, they do not read things in their own language in the same way as others probably read it and therefore in the case of newspapers it is very necessary that the restriction, if any, which is to be put on their publication should be definite and should be such as is capable of bearing a definite meaning. That brings in the question whether there ought to be any restrictions on newspapers at all. Whatever my own view on that question may be, some restrictions on newspapers there are already in this country, and they were legislated a long time ago, then dropped and again revived. People who are familiar with the history of press legislation will know that when the Press Act was attempted to be revived about 25 years ago, there was strong opposition from the then leaders of public opinion—to quote two names Sir Rash Behari Ghose and Lord Sinha of Raipur. They opposed the measure as firmly as they could. However, we have now got some laws and the laws are bad enough, but the application is still worse. For example, what would you think of the prohibition by the Press Officer of the publication of the debates of this Council? What would you think of the prohibition of the publication of the division list of this Council? All this is being done under the garb of the Press Act, and there are thousands of other instances. I am referring to only a few where the liberty of the press is interfered with because there is this precious Act in existence which says that the Local Government may go and forfeit the press or forfeit the security. I am quite aware that so far as the Anglo-Indian papers are concerned, they are safe. No Press Officer in Bengal can dare to touch them. They are not only immune from the interference of Government, but of course if they choose they can go on disseminating class hatred as much as possible. However, that is another matter, and I am talking of the Indian papers and the sort of restraint that is now being exercised over those papers. The lot of the Indian papers even under the present law is hard enough. To that it is proposed that these two clauses should be added, and what is the first clause? It has already been read out to the House and I need not waste the time of the Council by reading it once again, but the relevant clause which I want to read is this. "Papers, books and documents which publish any class of information which in the opinion of the Local Government tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement should be prohibited." I will throw out an open challenge to the Hon'ble Member or to his legal advisers to give me any instance of any book not only on politics but on any other subject from which an atmosphere favourable to the gaining of adherents to the terrorist movement cannot be extracted. I would like the House to remember that the salutary provision for having the matter tested in the High Court has even been denied. That will be made apparent from the extracts from section 23(*1*) of the Press Act that I have circulated to the members. Therefrom the House will see that the only supervision

that the High Court even under the present Act can bestow on the matter is to decide whether the publication in respect of which the order was made did or did not contain any words, signs or visible representations of the nature described in section 4(*1*). If you have the clauses as they now stand, the only power of the High Court will be to decide whether the publication did or did not contain any visible representation or any class of information which in the opinion of the Local Government tended to create an atmosphere favourable to the gaining of adherents to the terrorist movement. The only thing left to the High Court will be to find out whether there has been publication or not. As has been pointed out by various authorities and Judges beginning from Sir Lawrence Jenkins onwards, the powers of the High Court under the Press Act are small enough, but here by this provision it is intended that the High Court shall not exercise any authority in the matter. I do not know, but it may be that this section was drafted at the same time when the order of forfeiture in the notorious *Basumati* case was passed by the Local Government. The House knows, at least the non-official Indian members know, that only three or four days ago when the order of the Local Government regarding the forfeiture of a portion of the security of the *Basumati* newspaper was before the High Court, the Advocate-General got up and said that he could not support the order of the Local Government. That is the extent and plenitude of the wisdom of the Local Government, and because they know that they do exercise their powers arbitrarily what they propose to do is to make the opinion of the Local Government sacrosanct which cannot be touched by the High Court. I defy the Hon'ble Member to define this portion of the clause "which in the opinion of the Local Government tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement." I know it is no part of his duty to do so; it is not necessary for him to say anything on the point. He can only say that the publication in any newspaper, book or other document of any class of information in his opinion tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement. Well, the Local Government may say that any information about the Joint Parliamentary Committee will tend to create an atmosphere favourable to the gaining of adherents to the terrorist movement. They may say that is their opinion, because by delaying the constitutional reforms the Parliament is tending to create an atmosphere favourable to the gaining of adherents to the terrorist movement. Therefore, no news about the Houses of Parliament is to be given to the newspapers. The newspapers have got to accept it. As I said in my speech in connection with the motion for reference to the Select Committee, when a revolution was going on in Australia, all that the newspapers had got to say was that there was a feeding of Brahmins. That is the sort of thing that is sought to be introduced by this clause. I submit that if you want to emasculate public opinion, if you want to create a haze of doubt and

distrust about the motives and actions of the Government, you are going the right way about it. But I do not think that that is the right way to deal more effectively with the terrorist movement. It may on the other hand be said that that is the way to turn more and more men into terrorism. I submit that that is not what the House wants. What the House wants is a *sine quo non* of this Bill. What the House wants is that we will have no measure which will gain adherents to the terrorist movement. It may be said that in this Bill we are going to devise a measure which will stop the gaining of adherents to the terrorist movement. I submit that the House will be well advised to say that if this clause is there, the newspapers will be put out of action automatically, and they would have to suffer the same fate as that of the *Sulav Samachar* and the *Indian Mirror* of the pre-partition days. We all know what happened to these papers. The papers which were brought out with the ostensible object——

(The member here reached the time-limit but was allowed a few minutes more to finish.)

I think in the time at my disposal I shall not further deal with the clause, but I shall point out that clause 6 wants to add another clause to the Indian Press (Emergency Powers) Act, 1931, that is section 2B, which says "neither the name nor the designation, nor any words, signs or visible representations disclosing the identity of any witness in a trial by Commissioners appointed under the Bengal Criminal Law (Amendment) Act, 1925, or in a trial by a special magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932, shall without the permission of the Commissioner or of the special magistrates as the case may be or of the Local Government be published in any newspaper, book or other document." It means, taken as it stands, that supposing there is a trial before Special Commissioners in 1934 and supposing in 1954 a man writes a book describing a history of the movement and trial and all that; if there is the name of a witness published, then the press is to be forfeited. I know that it would be said that that is an extreme case, but I do say why should you have legislation which is open to abuse. Legislation ought to be such as to be absolutely foolproof and it ought to be such that even the present Government and its myrmidons cannot abuse it. I hope the House will accept the amendment.

Mr. J. N. GUPTA: It is with considerable regret that I find myself compelled once more to rise to take part in the debate on this Bill and oppose the views to which the Government are committed. I entirely agree with my friend, Mr. Satish Chandra Ray Chowdhury, that these clauses which deal with the press are perhaps the most important and are sure to be regarded by the public as in some respects the most dangerous clauses of the Bill, and which will, therefore, have to be most carefully examined by the Home Member. And it is to be hoped

that unless he is fully convinced that these additional checks on the liberty of the press are absolutely essential to enable the Government to successfully perform their duty of the suppression of terrorism he will not press for these clauses.

Sir, at a moment when for the first time in the history of this country the parliamentary form of a responsible Government is being introduced—I advisedly use the words "for the first time," for, although a beginning was made some time ago, it is only in the coming Reforms that real responsible Government is going to be introduced: You are at the same time trying to stultify that powerful organ, a responsible and free press, the third estate, as it is known in Great Britain and which in that country and in all other free countries is the only safety valve and only powerful instrument which ensures the successful and smooth working of the free political institutions of the country. While you are engaged in the glorious work of teaching the blessings of a responsible form of government, the people, you are at the same time going to deprive them of the powers and privileges of a free press, and which have been acknowledged in all civilised countries as the greatest safeguards for the smooth working of democratic institutions. But, of course, it may be said that this is only a theoretical argument. The press in Bengal it might be said has degenerated into such a state of irresponsibility when it is necessary in the larger interests of the State to still further curb its powers and freedom of action and prescribe for it the limitations of its activities. The danger of trying to curb the press in this manner and to try to stand in the way of any light which the press might throw on the actions of the executive officers of Government has been so well described by my friend, Mr. Ray Chowdhury, that I need not dilate on that point. But surely Government cannot possibly maintain, and I am sure the Hon'ble Member does not himself maintain, that in all circumstances and in every case his subordinates act in a manner which does not require any criticism or any information to be placed before the people through the medium of the press. Well, Sir, if the Hon'ble Home Member does not wish to make any such claim, and I have not the remotest doubt that that must be his view, what earthly object is there in bringing forward a clause of this kind? As has been pointed out, we have already a very rigorous Press Emergency Act which gives Government every power that it can ask for to deal with such cases. As a matter of fact, Mr. Ray Chowdhury has said that this clause goes directly against the very preamble of the previous Press Act and I entirely agree with him. I have also looked up the present Act and I find that section 4B provides for cases which "directly or indirectly express approval or admiration of any such offence or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence." So you can already deal with all these cases. Surely it is losing all sense of proportion to

seriously argue that it is necessary to take fresh power to prevent the press from publishing "anything in the nature of undue concern and sympathy for detenus in detention camps;" as stated in the notes to the original Bill. Have you not had examples already when the press has done very useful work in such cases? Sir, I will not go into details of the cases in which Government officers after due inquiry by a responsible Government officer have been found guilty of action which could not possibly be supported. In all such cases is it not the duty of the Government itself to see that every encouragement is given to the people and to the press to come forward and bring all such *bona fide* information before Government? And as for dealing with all cases of illegitimate and improper abuse of privilege by the press you have already got sufficient powers; I do not consider, Sir, that a measure of this kind is at all necessary. It will not help you to suppress "that atmosphere favourable to the gaining of adherents to terrorism" of which you speak. On the contrary, as Mr. Narendra Kumar Basu has so eloquently pointed out, it will probably create the very atmosphere which we all want and earnestly hope will not be created. And may I also point out to the Hon'ble Member that I myself personally have noticed a very marked and most welcome change in the attitude of the Indian nationalist press so far as terrorism is concerned. If the Indian press has already moved in this direction and seen for itself the great danger to which the whole community is exposed through the actions of these demented young men, will you at this stage interfere and tell the press that we do not appreciate or encourage all that they are doing to help us to suppress terrorism, but we want to gag them still further and take away from them that sense of liberty of autonomous and independent action which alone can enable the press to guide and mould independent public opinion. What will be the value of any opinion that the press might express if provisions of this kind are legislated? After what I have said, it may be argued that there is very little difference between myself and those who are suspected of being really hidden supporters of the terrorist movement. But, Sir, for myself I can say that I have perhaps taken more interest than most people in pointing out to the youths of Bengal the dangers of a terrorist mentality and I can also claim that my letters and publications in the press have had some effect on those for whom they were meant, and in one case at least one of the leading papers in Bengal came out with a leader on the very same lines of argument as I had advanced. So, I hope my attitude will not be misunderstood either by the Hon'ble Member or by any of my European friends. It is because we do not wish you to do anything which will discredit us in the eyes of the country and it is because we feel that legislation of this kind will make it impossible for us to give any useful help to fight terrorism that I implore you not to take these powers unnecessarily, powers which you do not really want and which instead of helping you might defeat the very object you have in view.

Dr. NARESH CHANDRA SEN GUPTA: I may say at once that I rise for just the very purpose which the Hon'ble the Home Member would not like, namely, to waste a little of his time. Sir, I do not find much objection to the words of this clause to which exception has been taken by the previous speakers: the words about stopping the publication of any class of information which tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement. That is most delightfully vague and it is possible to draw into this net every possible thing in this world. I do not object to that, Sir; what I do object to is that power under this section should be given to the Local Government. If the Hon'ble Mr. Reid would only agree to substitute for the Local Government the name of a man in whose judgment and in whose honesty I have the utmost confidence, that is of Dr. Naresh Chandra Sen Gupta, I would be very glad to accept this clause. In that case the first notification I should issue would be the stopping of the publication of this precious Act, for there is no literature, nothing in the world that I can think of, which is more likely to create an atmosphere favourable to the gaining of adherents to the terrorist movement than this Act itself. If Mr. Reid would just place himself in my position and do what I would have done, well, let us pass this Bill; let this Bill be put on the Statute Book and after that if the Hon'ble Mr. Reid only does this much and stops publication of this Act, we shall be eternally grateful to him. Sir, Mr. Reid, and I suppose the members of the Government generally, look upon us as a body of ignorant fools who come here only to waste the time of Government—ignorant at least so far as the terrorist movement is concerned. We must plead guilty to that much of the charge, because Government has carefully kept us ignorant. But does the Hon'ble Member or do his advisers who are none of them very ancient, really know as much of the history of the terrorist movement in Bengal as they think they know, or as for instance I can claim to know? Do they know that the history of this movement dates back to a time when they had not learnt to take interest in public movements? Do they know that the earliest whisperings of terrorism were heard in this country at a time when—and that is a most important fact to remember—at a time when the Vernacular Press Act was placed on the Statute Book by Lord Lytton, the first? That is a fact which I believe is not within the knowledge of Government. Well, after that Gagging Act, as it was called, was passed, young men exasperated by that measure actually formed themselves into secret societies; but that did not come to much, as happily Lord Lytton was succeeded by Lord Ripon. Then again does the Hon'ble Member know that the first breath of terrorism was heard in this country in the days of Lord Curzon, when in the plenitude of his strength Lord Curzon thought that he could ride roughshod over every shade of public opinion, and tried to do good in his own way, good which the people refused to appreciate? Well, Sir, Lord Curzon had

the same sense of strength and prowess which the Government of the present day has. When he was warned that by certain measures he was driving sedition underground, Lord Curzon had the hardihood to say "I am not afraid of driving sedition underground." What we are reaping to-day is the first fruit of the seed which was sown on that day. These are histories which perhaps do not come within the cognizance of the Hon'ble Member when he frames Bills of this character. Does he remember also what happened in Russia where such publication was forbidden? In Russia under the Tsars no persons could publish anything which had the slightest breath of sedition. They had not this section in their laws but they administered it, and with what result? The amount of unauthorised literature which was published and circulated from hand to hand and which ultimately reached the hands of the revolutionaries was enormous. From Geneva and from St. Petersburgh emanated volumes of literature which these people had managed to reach the hands of every man or woman who had revolutionary potentiality. These are the things you will have to remember if you really want to deal with terrorism. Sir, I think the lesson of the history I have learnt—not the history of the Government—is that this Bill is going to be the means of creating literature which will tend to create an atmosphere favourable to the gaining of adherents to the terrorist moment. Sir, I feel that there is no necessity—I feel that this Bill will not help Government in the least. Government has already terrors enough in their hands. I say it is not going to help, because it has not helped any country under similar circumstances. For that reason, I submit, that the first thing that would have to be done, if you act according to the spirit of this proposed section, is to suppress this Bill.

Mr. P. BANERJI: Sir, in rising to support this motion, I must say at once that it is the legitimate duty of every human being to criticise his government in his own way. But when the Government tries to shut out the expression of legitimate views of the people, and the people refuse to come forward to support it, they are called dishonest. On the other hand, I must say, Sir, that this Government is hopelessly dishonest. Had the Government been honest, it would not have stopped public criticism against it, for what it does in the name of law and order, and I must also say without any hesitation in the face of this so-called civilised Government in our country, that its whole object in view is to suppress all public criticism. Sir, as Mr. N. K. Basu has said, this Bill is not at all necessary, because the Government has been doing as it likes with the help of an overzealous officer in the person of Mr. B. R. Sen. What is the duty of this gentleman? This officer is trying by legitimate and other means to stop publication of news in the press by calling the newspaper offices on the telephone and threatening and terrorising them——

Mr. DEPUTY PRESIDENT: Please do not refer to that, Mr. Banerji.

The Hon'ble Mr. R. N. REID: On a point of order, Sir. Is the member entitled to use the expression "terrorising them"? He must withdraw the remark.

Mr. P. BANERJI: I have not used an unparliamentary expression.

Mr. DEPUTY PRESIDENT: I do not think that the expression is unparliamentary, but here, Mr. Banerji, you refer to a particular individual by name and accuse him of terrorism. That is certainly not permissible and you should withdraw it.

Mr. P. BANERJI: In that case, I withdraw the expression I have used.

The Hon'ble Mr. R. N. REID: Has the member withdrawn the expression, Sir?

Mr. DEPUTY PRESIDENT: Yes, he has done that, so far as it concerns the particular officer.

Mr. P. BANERJI: Sir, I was saying that every order of Government must be given in writing, but when no order is given in writing, is it not intimidation on the part of a particular officer of the Government to order the press over the telephone that they must not publish the division list of this Council? All the newspapers were ordered by him not to publish the division list on the motion for recommittal of this Bill. What was the motive behind it, may I inquire, Sir? The motive was to save those members from public criticism who had voted on that motion with the Government. Sir, a Government servant is a public servant and has got to say, "I have the honour to be your most obedient servant," and what is his duty? Is it not the duty of this particular officer to serve the public? But unfortunately in this country the servant of the people has become their master.

Mr. DEPUTY PRESIDENT: Mr. Banerji, would you please confine your remarks to the motion now under discussion?

Mr. P. BANERJI: Sir, I am coming to that. By stopping the publication of the division list, you may do some service to your supporters, but you are doing a great injustice to those other members

who opposed the Government. Sir, we have been returned to this Council by our constituencies, and we owe a duty to them as their representatives. And our constituencies have a right to know how we are doing our duties in the Council, and whether we are supporting or opposing the Government. Sir, the Hon'ble Member said that he was ready to face facts, and I give him the fact that one of his officers gave instructions on the telephone for stopping publication of the division list, and although the Press Act is on the Statute Book, this was done without any written order, and that is our grievance.

Then, Sir, when this Bill will be passed into law, what will happen? It is certain that still more stringent measures will follow. Sir, every member of a civilised government has the right to criticise and advise the government according to his own lights and as he thinks just and proper, and no civilised government has stopped an honest expression of opinion. If there is such criticism of government's action, there is bound to be at least some check on that government, however autocratic it might be. Sir, we, the representatives of the people, have come here not certainly at the sweet will of the Government members. We have come here by the suffrage of the people, and unless this House is gagged, we have every right to take our seats here and criticise whatever measure Government brings forward in the interests of the people and as the people and our constituencies desire us to do. Sir, it has also been provided in this clause that "the Local Government may prohibit the publication in any newspaper, book or other document of any class of information which, in the opinion of the Local Government, tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement." But, Sir, it has been proved beyond doubt that the Local Government cannot always rightly give their opinion for we have the recent High Court ruling before us. Sir, if there were no provision for an appeal under the Press Act, as in this clause 6, what would have been the case with the *Basumati*? Had there been no such provision in the existing Act, in addition to the fine of Rs. 1,000 imposed by the lower court, there would have been a forfeiture of its security money as well, just as has already happened in the case of *Advance*. Sir, the High Court has ruled the Local Government was wrong, and I tell the Home Member, as he has repeatedly wanted us to cite facts, that when in this case the decision of the Government was challenged and an appeal was filed, the result has been the judgment of the High Court that the Government decision was absolutely wrong. I ask, Sir, under these circumstances, is it not prudent on the part of the Government to delete this clause. Sir, Government has already got sufficient powers under the present Press Act, and there is no necessity for this clause. With these words, Sir, I support the motion.

(The Council then adjourned for 15 minutes.)

(After adjournment.)

Mr. SHANTI SHEKHARESWAR RAY: I feel it my duty to support the amendment moved by my friend asking for the deletion of this clause. Sir, it is very difficult to understand the attitude of the Government. They have nowhere, as pointed out some time ago, defined the word "terrorist" or they have explained what they do mean by terrorist movement. A non-official member of this House, Mr. Miller, has perhaps come to the rescue of the Government and made an attempt to indicate what he understands by the terrorist movement. I do not know whether the Government of Bengal accepts his interpretation of the word "terrorist" or the terrorist movement. Anyway we are told here that under this clause the Local Government will have the right to prohibit the publication in any newspaper, book or document any class of information, and I believe it is the intention of the Government to include comments on such information also. I would like to have the express opinion from the Government on that point as to whether I am wrong in including comments under this head, because it appears to me that if that is omitted that will bring another difficulty and perhaps later on the Government may come forward with an amending Bill to remove this difficulty. But as it is, it is the intention of Government to prohibit such publication which tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement. Well, Sir, we have heard here before this how wide and how vague all these are. Well, Sir, it will not only paralyse the newspapers but also the activities of all public men,—all men who seek the suffrage of their constituencies of this Legislative Council. Sir, just let me illustrate my point. It is said that one of the causes on which the terrorist movement thrives is the economic distress of the land. Anyone discussing the subject, anyone trying to find a solution of the problem can be gathered into the net on that account. Well, there is the question of tenancy legislation. There may be a school of thought in the country and there is already one, I refer to the *Proja Party*, their sympathies are not with the Government as at present constituted. Well, it is their grievance that Government as at present constituted are inimical towards their interests. They tried to bring home to the people at large the injustice of such an attitude in a way which will bring the Government into contempt. Sir, contempt brings discontentment. Well, it will be admitted that terrorism thrives on this discontentment. Well, Sir, if the Government is so inclined, and if the Government is consistent they cannot but be so inclined, they will have to deal with the leader of the *Proja Party*, they will have to deal with the supporters of the tenants, and people like Mr. Thompson who in season and out of season attack the landlords. But, Sir, is it the intention of the House to give the Government such wide and extensive powers? Sir, I am told that the Government will not exercise it. I ask all the members of this House

to realise that you are not making this law for only one year when we hope to see the Hon'ble Mr. Reid in charge of the department but also for a time when the Local Government as at present constituted ceases with its transferred and reserved departments. I would like to tell that before you extend your support to a measure of this nature you should look into the future. The day will come and much sooner than you expect, when you will feel what a mistake you made in lending your support to such a measure. Sir, I ask the members of the British group to realise that very soon they will be reduced to the position of the members of the opposition side of this House; they will be in minority; their interest will be at the mercy of the majority which will constitute the Local Government, and there is every danger of their interest being attacked. In that case, are you prepared to give such extensive powers to the Local Government which by virtue of this power may weaken your position, may check all constitutional opposition? Well, Sir, I ask them to consider the matter very seriously and to lend their support to a measure embodying such a clause after that. Sir, it may not strike very important to-day but I am sure I make this prediction to-day that within one year after the new constitution is ushered into the country it will be the members of the British group who will first raise their voice in protest against such a measure. Sir, I would like to impress on the House the absurdity of such a provision. The Government already had in their hands the power to control the press, and they are controlling the press all over the country by virtue of the Press Act. Well, the Government of Bengal can only prohibit any publication in Bengal, but what about the rest of India? Well, Sir, they can prohibit the publication of any information, any comment and any book in Bengal but how can they prevent the publication of the very piece of news or the very piece of comments in a sister province. You cannot prohibit any such things in Patna. Well, I am only laying stress on this point, because I want to point out to the Government that in their effort they lack in consistency. The right course for them would have been not to ask for such a measure for Bengal only but ask for such a provision in an all-India Act. If they had done that, I could have understood their position, but perhaps Government of Bengal is not the Government of India. In Bengal they have come into a frame of mind where reasoning has no place. They are being driven from one absurdity to another without any thought for the future. The present Government of Bengal—the Government as at present constituted—will cease to function in less than two years (A VOICE: "Are you sure?"), and if we are to accept the statements made on high authority, even earlier than that. I will make that inference on the basis of statements made by high authorities in India and in England. I would ask the House to recall that once in the Round Table Conference a great high authority, as well as in a speech in Delhi, another high authority asked the legislators to go to the constituencies and try to educate the people

of those constituencies to get them prepared for the coming reforms. Months have gone by and, gentlemen, if there is any reliance on such a high authority, we expect that the day cannot be very far off when the promised constitution will be in force in this country. There is no point to ask to go to the people of constituencies to be prepared for the coming reforms and to hold up elections indefinitely. Perhaps an earthquake may hold up the elections but at any rate the general election must come and the new constitution must come, so any new measure the Government now passes through the House they should be guided by the future policy of the new Government. On the one hand you cannot ask us to educate the people of the constituencies and at the same time prohibit such things by a measure of this nature——

Mr. DEPUTY PRESIDENT: Please come to the point.

Mr. SHANTI SHEKHARESWAR RAY: Sir, it is an infringement of our rights? However, if we are to educate our constituencies we have got to place our case before them, that the present policy of the Government for the last few years is not the right policy; and if we are to have the support of the constituencies, if we want to come back, we have to do that.

Khan Bahadur Maulvi AZIZUL HAQUE: On a contentious legislation of this nature, I feel it is very difficult to take part, particularly because some of us feel that there is so much likelihood of misunderstanding, and in view of some of the speeches where we have heard motives being ascribed rather than the merits of the situation discussed. I will not try to follow it, but as one of the members of the Select Committee with a responsibility to decide, I lay before you the situation under which it was thought that at least the section may stand in the present form in the present Act. Sir, I do not deny that it is in the nature of an extraordinary power which is not consistent with the normal state of political life. I also do not deny that it is possible that this extraordinary power might be misused at times and I also do not deny, Sir, that the press might be greatly hampered in their activities by the operation of this Act. But, Sir, on the other side the situation that was confronted before us was this: namely, that there is a terrorist movement in this country. As regards that I do not think anybody in this House has disputed that proposition. Granting, Sir, that the terrorist movement is in existence, the question is whether the newspapers have got any responsibility in that matter or not. Once it is found that the press has a very large responsibility in moulding the thoughts of the impressionable youths of the country, Government came with this section with a view to control certain activities of the press in

so far as they might be conducive to creating an atmosphere favourable to gaining adherents to the terrorist movement. It has been the opinion of a section of the public that failing other alternatives the press to some extent can be controlled with a view to avoid such a situation. There are others who contend that the terrorist movement is to a certain extent, if not fully, finding favour in what the press chooses to preach in this country. I seriously think that apart from terrorism a very large number of youths can be guided by the press and I hope that sooner the press of our country comes to such a position in which they will be the real moulders of the thoughts of our youths the better. I say at once that the future Hindu-Moslem feeling in this country is entirely dependent upon the press. Coming to the point that the press has some responsibility in this connection, what is the best way open to Government if they feel that they should stop certain publications, not after publication, but before publication? As soon as it is published, it is out in the country, and if it has had the effect of creating a bad atmosphere, the mischief is done. The question comes in as to whether any preventive step can be taken, and if it is considered that some preventive action is necessary by which it can be stopped before publication, then automatically this section comes in. (Question.) Mr. J. N. Gupta questions as to how it is possible to stop it. I myself also think that there are considerable difficulties as to how this section can be operated upon, but if some measure can be found out and if Government say that it is possible for them to stop it, we cannot take the responsibility of refusing the power to Government if at any rate the Government is satisfied that by the exercise of this power, it can satisfactorily deal with the situation. I myself feel that it will be very difficult for Government to come to a formula by which they can prohibit the publications in newspapers, books or documents, but I do not think it is impossible to find out such a formula. On the other hand, it would be better to leave such a formula in a general form, because if you once find out the details of the formula, it would really be putting a great restriction on the press of the country. Surely, Sir, this Legislative Council in the past has, by putting questions and bringing forward resolutions and amendments, done its duties in controlling the activities of the Government. I think this Council during the last 10 or 12 years, in spite of its defective machinery, has been able to bring about an atmosphere of being able to control the activities of Government. If these sections of the present Bill are misused, I personally think that this Legislative Council will be the proper place where such things will be ventilated to find out immediate remedies. But for the time being, a general power may be given leaving the discretion to the Local Government. To quote a small instance, the process-servers are getting their grievances ventilated by repeated questions in this House. If there be any abuse of powers, there will not be dearth of members with a view to put questions or

bring forward resolutions in this House. So far as this section is concerned, it is merely a power to cope with a particular situation. If it is admitted that there is such a situation, surely power may be given to the Local Government to deal with it. And surely that is a matter which may be left in a general form for some time to come, till experience tells us some time after how the power is exercised. I frankly state that none of us could give a better draft within the time at our disposal and we thought that for the time being, it may be left as it is.

Babu JATINDRA NATH BASU: Sir, I have listened very carefully to the speech just delivered by Khan Bahadur Azizul Haque, and I share to the fullest extent the anxiety that he feels that measures should be taken in every possible way to stop the growth of the terrorist movement. But I differ from him as to the method that ought to be adopted as regards this particular provision that is sought to be enacted. The position of the Government as it is at present constituted is difficult. It is not responsible to the legislature. As Khan Bahadur Azizul Haque has pointed out, there is no doubt that the legislature has the right of criticism and the right of obtaining information by interpellations, but his experience in this legislature will tell him that in questions relating to reserved departments there has been such a thing as the Government for the time being not acting according to the decision of the legislature and certifying measures and grants when it differed from the decision of the legislature. So, the legislature, while it can undoubtedly be a critic, has no hand in actually shaping the policy of the Government. The difficulty about which I am speaking is this, that Government not being responsible to the legislature, there is a great amount of suspicion as to its intentions and the effects. It is probable, and it may also be the fact that in a great many cases the suspicions are unfounded and there may be no reason for those suspicions being entertained against Government. But the fact is that the people of this country are not different from the people of other countries. They are exceedingly sensitive about their rights, and one of the rights which they cherish is the free expression of public opinion without interference from anyone in authority. So far as such expression has the effect of incitement to violence against the State or any properly constituted authority, the law as it stands contains ample provisions for meeting such a situation. But the provision which is sought to be inserted by this Bill goes much further than any enactment up to date passed by any Indian legislature or brought forward by any Executive Government. Khan Bahadur Maulvi Azizul Haque admits that it is of an extraordinary character. If it is of an extraordinary character and brought forward to meet the situation that has arisen temporarily, then its temporary character should have been made clear. But it is going to be of a permanent character. In other

countries no doubt similar measures have been taken with a view to meet a particular situation, for instance, the Fascist movement in Italy and the Nazi movement in Germany, but apparently there the leaders have the majority of the people at their back. The greatest care should be taken by Government not to give rise to any suspicion in the minds of the people that the few rights that they possess are going to be interfered with. Those who have studied the history of State measures dealing with such rights know that such interference in the past had spread discontent to a very large extent. That is the kind of mentality that the people of this country have. You cannot stop it. It is a state of things that does exist and it is difficult to ignore it, and I do not think it would be wise to ignore it. Continued spread of disaffection is a thing which cannot be passed over as being of no importance, and this particular measure, which leaves it to the Executive administration, whoever for the time being might be in charge of such administration, without affording the aggrieved person any opportunity to have the question decided by adjudication of either a regular tribunal or anything resembling a tribunal or an independent authority, is a thing that cannot but be looked upon with disfavour by the people. I think, therefore, that in spite of the good effects that are anticipated in connection with this legislation, it is difficult for us, who do not know as to whether up to the present or in the past there has been any accretion to the terrorist movement by any writings in the press, to accord our support to a measure like this. Sir, I remember that when the 1908 Act was passed the Government of India brought out a publication, which must be in the archives of the Government of Bengal, containing extracts from various newspapers showing that the matters which they wanted to deal with by that measure were matters which required attention. I do not know whether the Government of Bengal have any definite and positive evidence that any particular writings in any particular newspaper have caused the mischief which they want to prevent. In the absence of such information, the ordinary public can only judge from the knowledge that they can acquire in the ordinary course. On that basis, it is difficult to accord support to this measure. I, therefore, support the amendment.

Mr. DEPUTY PRESIDENT: I may tell the House that in order to help the progress of the Bill I propose to sit to-day up to 7-30 p.m.

Mr. Deputy President thereupon called on Mr. Reid to speak.

Mr. NARENDRA KUMAR BASU: With great respect I beg to submit that it was definitely understood yesterday that the Council would be adjourned at 7 p.m. to-day, because Mr. President when he announced that he would sit till 7-30 yesterday, said that he had it in command from His Excellency the Governor to say that from to-morrow

the House would sit at 2-30, but that for yesterday only he proposed to sit till 7-30, so that our sitting till 7-30 yesterday was merely consequential upon our assembling at 3 p.m. that day.

Mr. DEPUTY PRESIDENT: But I would like to finish the clause to-day. I hope there will be no objection if for to-day at least we sit till 7-30. I have already called upon the Hon'ble Mr. Reid to speak.

Dr. AMULYA RATAN GHOSE: Will you in that case be kind enough to allow those members who have given notice of similar motions to Mr. Ray Chowdhury's, viz., 61-66, an opportunity of speaking after the Hon'ble Mr. Reid has replied?

Mr. DEPUTY PRESIDENT: No, it was up to those members to have caught my eye, but having failed to do so, they are in the same position as members who have not tabled any motion.

The Hon'ble Mr. R. N. REID: I think we should be grateful to the last two speakers, namely, Khan Bahadur Maulvi Azizul Haque and Mr. J. N. Basu, for having brought the discussion back to reality. The real purpose of this clause, as I explained, is not retributive, it is not intended to be deterrent in the ordinary sense of the word. It is one of the preventive clauses of the Bill on which I would like myself to lay, as well as the House also to lay, particular stress. The purpose of this clause is to prevent the publication of a type of information and in such a form—the forms are perfectly well known to us—as is calculated to excite youthful minds to join the terrorist movement, namely, the kind of publications which hold up convicted terrorists or terrorists under detention as oppressed persons, as persons who deserve the sympathy of the general public, the sort of thing which perverts the sentimental young men to a sort of wrong-headed hero-worship. I admit, Sir, that this clause is drastic, but we are living in times which require drastic measures, and I do think that if a clause like this has a good chance of preventing young boys from being drawn into the net of terrorist conspiracies it is worthwhile sacrificing perhaps some of the ordinary liberties which we cherish, in order to achieve this end, namely, the prevention of some at least of our young men from being drawn into these nefarious conspiracies. It is not intended as some speakers would have us believe to gag the press and to drive it out of existence; nothing of the sort, Sir. It is intended to try and prevent the publication of the sort of stuff that I have described, and I think that in a case like this if the legislation is passed it is necessary to trust the authority which is to administer it, not to abuse it. Sir, suspicion has been voiced of the intentions of Government and the way in which the Bill will be used if it is passed into law, but we can only

say that Government has no intention that it should be abused and I can assure the House that Government will not tolerate any abuse of its provisions by their servants.

There is one other point which I should like to mention which I think Mr. J. N. Basu referred to. I think he said that this clause was going to be a permanent part of the statute book in this country. But actually it only seeks to amend the Indian Press (Emergency Powers) Act, 1931. That Act expires in 1935 unless the Government of India re-enact it.

Babu JATINDRA NATH BASU: Thank you for the information.

The Hon'ble Mr. R. N. REID: Perhaps that makes a difference, but I do not know. This preventive aspect of the clause is that aspect of it which makes it necessary that we should have in clause 2A the words "in the opinion of the Local Government," because the object of the clause is to prevent the publication, as Khan Bahadur Maulvi Azizul Haque has clearly put it, of such things beforehand and not after it has been published and has done the mischief. It is only by preventing such publication and not after the publication has been made that we hope to achieve the object of the Bill, that is, prevent young men from being excited by a sort of perverted hero-worship which such publication is so apt to engender. I do not think I need detain the House or waste its time longer and I beg to oppose the amendments.

Dr. AMULYA RATAN GHOSE: I rise on a point of order, Sir. You have told the House that as a matter of convention this sort of procedure has been adopted that a member before he can move his motion has got to catch the President's eye. But I beg to submit that this is the case only where a member has no substantive motion in his name; but in a case where a member has put down a motion the practice in this Council is for the Chair to call upon that member and that member accordingly rises and speaks. That is the method, Sir, by which motions and amendments are dealt with in this House. In connection with the group of amendments Nos. 57-60, Babu Satish Chandra Ray Chowdhury was called to move his amendment but another member who had tabled a similar amendment was not called upon to speak, so far as I remember. Similarly, in connection with amendments Nos. 61-66 Babu Satish Chandra Ray Chowdhury had the precedence to move his motion, but as he did not move it the next man should have been called and so as of right and I being the next mover I should be given an opportunity of speaking.

Mr. H. S. SUHRAWARDY: I do not think, Sir, that the mere fact that a member has given notice of a motion gives him a prescriptive

right to be called upon to speak. As a matter of fact, in many cases, for instance, with regard to motions Nos. 47-55 the Chair did not call upon all the members who had tabled similar motions. That is the custom of this Council so far as I know.

Mr. W. H. THOMPSON: It should I feel, Sir, be remembered that we are considering amendments, not the persons who have given notice of them. Once an amendment has been moved, we discuss that and need not consider whether anyone else gave notice of the amendment.

Mr. DEPUTY PRESIDENT: When it is found that a number of similar amendments stand in the names of several persons, the first member is generally called upon to move. Thereafter the position of all other members who have tabled similar motions is that they stand in the position of supporters to the motion and must, if they wish to speak, catch the speaker's eye like any other members of the House.

Babu Satish Chandra Ray Chowdhury's motion that clause 6 be omitted being put, a division was taken with the following result:—

AYES.

Baksh, Maulvi Syed Majid.
Banerji, Rai Bahadur Keshab Chandra.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Babu Kishori Mohan.
Fazlullah, Maulvi Muhammad.
Ghose, Dr. Amulya Ratan.
Gupta, Mr. J. N.,
Haque, Kazi Emdadul.
Maiti, Mr. R.
Ray, Mr. Shanti Shekhareswar.
Ray Choudhury, Babu Satish Chandra.
Roy Choudhury, Babu Nem Chandra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
[illegible], Khan Bahadur, Maulvi Emaduddin.
Ashworth, Mr. S. G.
[illegible], Babu Lalit Kumar.
[illegible] Sahib Sarat Chandra.
Barman, Babu Premhari.
Barma, Rai Sahib Panchanan.
[illegible], Mr. N.
Bettenley, Mr. J. M.
[illegible], Mr. N. N.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Chowdhury, Haji Badi Ahmed.
[illegible], Mr. D. J.
[illegible], Mr. S. R.
[illegible] Bahadur Kamini Kumar.
Dutt, Mr. S. S.
Eaglen, Mr. H. G. A.
[illegible], the Hon'ble Nawab K. G. M., Khan [illegible].
Fazlan, Mr. L. F.
Ferguson, Mr. R. N.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhaj Nawab Bahadur Sir Abdelkerim, of [illegible].
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. F.
Hussain, Nawab Musharruf, Khan Bahadur.
Kasem, Maulvi Abul.
Magwire, Mr. L. T.
Martin, Mr. C. M.
Miller, Mr. D. G.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Mullick, Mr. Nakunda Behary.
Nag, Reverend S. A.
Nandy, Maharaja Srie Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. G. K.
Quasem, Maulvi Abul.
Rahaman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur.
Ray, Babu Khaitar Mohan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.

Roy, Nirendra Kumar.
Roy, Mr. S. N.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Mr. B. R.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Sumner, Mr. C. R.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 17 and "Noes" 61, the motion was lost.

Babu Satish Chandra Ray Chowdhury's motion that in clause 6, proposed section 2A be omitted was then put and a division was taken with the following result:—

AYES.

Bahsh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kishori Mohan.
Fazlullah, Maulvi Muhammad.
Ghose, Dr. Amulya Ratan.
Gupta, Mr. J. N.
Hoque, Kazi Emdadul.
Mahti, Mr. R.
Ray, Mr. Shanti Shekhareswar.
Ray, Chowdhury, Babu Satish Chandra.
Roy Choudhuri, Babu Hem Chandra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ashworth, Mr. C. B.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Barman, Babu Prambari.
Barma, Rai Sahib Panchanan.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Burn, Mr. H. H.
Chaudhuri, Khan Bahadur Maulvi Altmuzzamus.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chowdhury, Haji Badi Ahmed.
Cohen, Mr. D. J.
Dain, Mr. B. R.
Dutt, Mr. B. S.
Edgley, Mr. N. G. A.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. N.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dildusr.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharrut, Khan Bahadur.
Kasem, Maulvi Abul.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Miller, Mr. C. C.
Mittur, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Mullick, Mr. Mukunda Behary.
Nag, Reverend S. A.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Qussem, Maulvi Abul.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-.
Roy, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijay Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. N.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Mr. B. R.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Sumner, Mr. C. R.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 15 and "Noes" 58, the motion was lost.

Adjournment.

The Council was then adjourned till 2-30 p.m. on Friday, the 8th March, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Thursday, the 8th March, 1934, at 2-30 p.m.

Present:

Mr. Deputy President (MR. RAZAUR RAHMAN KHAN), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 102 nominated and elected members.

LEGISLATIVE BUSINESS

GOVERNMENT BILL

The Bengal Criminal Law Amendment Bill, 1934.

The discussion of the Bengal Criminal Law Amendment Bill, 1934, was resumed.

Clause 6.

Mr. DEPUTY PRESIDENT: I propose to take amendments Nos. 67, 68 and 69 together, and I would like to have a general discussion on them. Mr. Basu, will you please move yours?

Mr. NARENDRA KUMAR BASU: I move that in clause 6, in proposed section 2A, lines 2 to 5, the words "either absolutely or subject to such conditions and restrictions as may be specified in the notification" be omitted.

The Hon'ble Member will remember that the clause, as published, says that the Local Government may prohibit either absolutely or subject to such conditions and restrictions as may be specified in the notification the publication of a certain class of information. The difficulty of having the present language "prohibit either absolutely or subject to such conditions and restrictions as may be specified in the notification" is obvious, firstly, if there are more restrictions to the conditions than there are conditions or for the matter of that more conditions than there are restrictions, it would be very difficult for any newspaper to abide by those restrictions and conditions. Secondly,

I think it would be helpful to Government if these words were omitted, because if these words are omitted, the clause will run thus:—

"The Local Government may, by notification in the local official gazette, prohibit the publication in any newspaper, etc.," and thereby the task of the Local Government in specifying the class of information which in their opinion ought not to be published would be much lighter. But to say that a certain class of information shall not be published and if published it may be under restrictions that would make the task of Government more difficult as will be apparent from the Statement of Objects and Reasons in the Bill as introduced. It was stated there that "the experience of the Local Government is that while, since the passing of the Indian Press (Emergency Powers) Act, 1931, direct encouragement of murder or violence has perforce been abandoned recourse is still freely had to indirect methods such as the expression of undue concern and sympathy for detenus in the detention camps and convicts in the Andaman Islands, commemoration of terrorist convicts and detenus, and the publication of laudatory accounts of revolutionary movements in other countries all of which are bound to have the effect of putting revolutionary ideas into the susceptible minds of the young." That is why the Government are out to stop publication. Supposing the Local Government say that no information which shows undue concern and sympathy for detenus in the detention camps shall be published. That is one thing. But if the Local Government were trying to formulate conditions under which expression of concern and sympathy for detenus in the detention camps might be permitted and other conditions under which the concern and sympathy would appear to them to be undue, I submit it would not only be a difficult task for the Local Government but also for the newspaper proprietors. I, therefore, think that if the clause be there, as has been decided upon by the collective wisdom of the House last night, then in order to make it effective and in order to make it easier for the newspaper proprietors so that they may know where they stand, these words ought to be repealed.

The Hon'ble Mr. R. N. REID: I certainly feel very grateful to Mr. Basu for his solicitude for Government and for saying that he has put forward his amendment in the hope that it will be helpful to Government. But the only difficulty is that I am afraid Government differ from him on that point. We shall be glad to receive any help towards making this clause effective, but I may say that when the clause was drafted, it was thought necessary and desirable that these particular words should be put in. The reason was to restrict to some extent this power of prohibiting publication. In fact, it means that while Government might have given themselves an absolute power to prohibit entirely certain publications, they also lay the way open and publish the fact that they will permit publication of certain classes

of information subject to certain conditions and restrictions. In other words, newspapers may be permitted to publish that information under certain conditions which make the publication less harmful. I do not think I have anything else to add in the discussion as amendments Nos. 68 and 69 have not been moved. This is what I have to say as regards No. 67. With these words I oppose the motion.

Mr. Narendra Kumar Basu's motion being put, a division was taken with the following result:—

AYES.

Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Khetri Mohan.
Choudhury, Maulvi Nurul Absar.
Faziullah, Maulvi Muhammad.
Hoque, Kazi Emdadul.
Maiti, Mr. R.
Ray, Mr. Shanti Shekhareswar.
Rout, Babu Nutani.
Samad, Maulvi Abdus.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Banerji, Rai Bahadur Keshab Chandra.
Barman, Babu Premhari.
Bose, Mr. S. M.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Cohen, Mr. D. J.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. R. B. A.
Ghuznavi, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. S. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghuznavi, the Hon'ble Alijad Nawab Bahadur Sir Abdelkerim, of Dilduar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Karim, Maulvi Abdul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maguire, Mr. L. T.
Martin, Mr. O. M.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Mullick, Mr. Mukunda Behary.
Ray, Reverend, B. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. G. K.
Rahman, Mr. A. F.
Rahman, Maulvi Azizur.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Ray, Mr. Sarat Kumar.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Townend, Mr. H. F. V.
Withinson, Mr. H. R.
Williams, Mr. A deG.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 11 and "Noes" 48, the motion was lost.

Mr. DEPUTY PRESIDENT: Mr. Basu, will you now move your amendments Nos. 70 and 71 together? We will have a general discussion on them.

Mr. NARENDRA KUMAR BASU: With your leave, Sir, instead of moving these two amendments which stand in my name I beg to move a consolidated amendment as follows:—

"That in clause 6, in proposed section 2A, line 6, for the word 'book' the words 'news-sheet, pamphlet, leaflet' be substituted."

Mr. DEPUTY PRESIDENT: You have my permission to move it.

The Hon'ble Mr. R. N. REID: Sir, I heartily accept the amendment in the altered form which has been moved by Mr. Basu.

The motion was then put and agreed to.

Mr. NARENDRA KUMAR BASU: I move that in clause 6, in proposed section 2A, line 7, after the word "which," the words "is incorrect and" be inserted.

In moving this amendment I need hardly recall to the House the importance of it. The clause with the amendment would then read as follows: "The Local Government may.....prohibit either absolutely or subject to such conditions and restrictions as may be specified in the notification the publication in any newspaper.....any class of information which is incorrect and in the opinion of the Local Government tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement." I have just heard the Hon'ble Home Member say that he looks not quite without suspicion to any attempt made by me to help the Government in framing the wording of the clause. I again repeat that this amendment is intended to help the Government. Sir, Government are taking drastic powers, as has been admitted by the Home Member, to regulate the publication and the conduct of newspapers. But the acid test of their sincerety is not trying to take arbitrary powers over the newspapers and to stop all expressions of opinion would be their attitude towards this amendment. It may be that Government do not want coloured or even garbled versions of incidents to appear in newspapers, as it may create trouble for Government. But where the information is true, where the information is correct, I submit there is no case made out for their suppression. If the Government would try and suppress the imparting of correct information through the Press, then I submit newspapers would have no right to exist. Sir, it is not by suppressing the publication of correct information in newspapers that you can possibly stop creating an atmosphere favourable to the gaining of adherents to the terrorist movement. If you explicitly reject this amendment and take it upon yourself to prohibit publication of correct information, then I submit you will thereby be creating an atmosphere favourable to the gaining of adherents to the terrorist movement.

I am afraid that the next step might be that all talk about detenus in the Legislative Council will be stopped, and certainly the effect of this clause as it stands to-day—if it were passed unamended by the words I have suggested—would be that supposing a newspaper where to publish information elicited in this Council from the Home Member

himself regarding the condition of detenus at De risoners in the Andamans and supposing the Government s news-papers would not be able to publish them—I submit the newspapers' editors would not even venture to go and have that tested in a court of law whether the publication was previleged or not. But the newspaper would at once stop publication even of a statement made by the Home Member regarding detenus. I submit no Government in the world has any right to suppress true and correct information from being given to the people; and if they were condemned to do so it would create a good deal of suspicion, a good deal of resentment —in fact, it would create an atmosphere favourable to the gaining of adherents to the terrorist movement. Therefore, Sir, if it is permissible for a mere Indian to quote from some language other than English of which he is absolutely ignorant—if I may be permitted to say so—to me it seems that the attitude of the Home Member is best expressed by *Timeo Danaos et dono ferentes*. But I hope the Home Member will kindly accept this gift from the hands of the opposition and accept this amendment.

The Hon'ble Mr. R. N. REID: Sir, I am sorry Mr. Basu has put in words in my mouth which, I submit, I never uttered. I never said that I looked upon any suggestion from the other side of the House with suspicion or that any proposal which he made for helping Government was looked upon with suspicion by me. On the contrary, I demur to that and I want to say this, that during discussion in the Select Committee we had an enormous amount of help from Mr. Basu, and I hope he will not entertain any *arrière pensée* about that.

The reason why I am unable to accept this amendment is this: It is true that true and correct information can be published in such a way that it excites in immature minds feelings of misplaced hero worship—the very purpose of which this clause is intended to be a prevention. They may be true facts, but they can create mischief. I have in my mind a certain case. Supposing it was published as an invitation in the newspapers to celebrate some commemoration as Jatin Das Day or Hijli Day. I submit they may be perfectly true. There are such celebrations, but those celebrations are intended and can only be intended to celebrate the memory of men who have been engaged in a subversive murderous campaign, and I submit that though correct it is not desirable that the information should be published in the public press because of the effect it has on young persons whose immature minds are easily led away or may easily be led away by such publications into dangerous paths which we are all anxious they should not enter. For these reasons I am unable to accept this amendment and I oppose it.

The motion being put, a division was taken with the following result:—

AYES.

Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Chaudhuri, Baba Kishori Mohan.
Chaudhury, Maulvi Nurul Absar.
Fazlullah, Maulvi Muhammad.
Moque, Kazi Emdadul.
Maiti, Mr. R.
Poddar, Seth Hanumman Prasad.
Ray, Mr. Shanti Shekhareswar.
Rout, Babu Mosani.
Samad, Maulvi Abdus.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Bakth, Maulvi Shaik Rahim.
Bal, Rai Sahib Surat Chandra.
Banerji, Rai Bahadur Keshab Chandra.
Barman, Babu Prombari.
Bose, Mr. S. M.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chowdhury, Haji Badi Ahmed.
Cohen, Mr. D. J.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. N. B. A.
Eusufji, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. S. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dildusr.
Gilchrist, Mr. R. R.
Gladding, Mr. B.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. S. P.
Hussain, Nawab Musharruf Khan Bahadur.
Karim, Maulvi Abdul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Macpaire, Mr. L. T.
Martin, Mr. D. M.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Mukhopadhyaya, Rai Sahib Surat Chandra.
Mullick, Mr. Mohanda Behary.
Nag, Reverend B. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Rahman, Mr. A. F.
Rahman, Maulvi Azizur.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Babu Jitendra Nath.
Roy, Mr. Saileswar Singh.
Roy, Mr. Surat Kumar.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarker, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshay Kumar.
Sen, Mr. B. R.
Townend, Mr. H. P. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 12 and "Noes" 56, the motion was lost.

Mr. NARENDRA KUMAR BASU: Mr. President, Sir, I beg to move that in clause 6, in proposed section 2A, lines 7 and 8, the words "in the opinion of the Local Government" be omitted.

Sir, I consider this amendment to be one of the most important that I have tabled over this Bill. The previous one which has just been lost was in my submission equally important, but probably because I was unable to make its importance felt by my fellow-members, it has been lost. However, I am not crying over spilt milk, but I shall ask the members of the House very kindly to consider what I am going to say about the present amendment. I am not of

course unaware of the fact that there may be members to whom any words addressed from this side of the House fall upon deaf ears. But I am trying to make my submission to those members who are not more anxious to win the favours of the Government than to do their duty by their country. And I hope my non-official friends will kindly see what the effect of the retention of these words is. At the same time I shall ask the Government kindly to see whether the omission of these words can make any mischief. As I pointed out some time yesterday, the only check against any order passed by the Local Government which the keeper of the printing press has is to appeal to the High Court. An appeal to the High Court is limited under the law to matters in respect of which such order was made, to set aside such order, and the High Court shall decide if the newspaper, book or other document in respect of which the order was made did or did not contain any words, signs or visible representations of the nature described in section 4, sub-section (*1*). That is to say, if in section 4, the addition, *viz.*, which give any information in contravention of a notification published under section 2A, which is proposed to be made by the subsequent clause 7, is accepted, as it must be accepted as a necessary corollary to the enactment of clause 2A, then on an appeal to the High Court, the decision of the High Court will be limited only to the question whether there has been any application or not, because it would be argued before the High Court whether "the information tends to create an atmosphere," and so forth is not a question for the High Court, but that the Legislature had left it to the Local Government. I submit, Sir, that is a vital matter of principle. If you take it the other way, supposing these words were not there, I take it the Local Government by which I mean the Hon'ble Mr. Reid, the Home Member, will certainly not prohibit the publication of any class of information which is not in his opinion dangerous under this clause. He will certainly not accept the opinion of Mr. N. K. Basu or Dr. N. C. Sen Gupta, as to the class of information which he will prohibit. Even without these words, prohibition by the Local Government must be of information which in the opinion of the Local Government tends to do such and such things. Therefore, Sir, the omission of these words will not hurt the Government in any way. They will not be bound by omitting these words to get the opinion of somebody else outside the Local Government and then to publish their notification. What will happen if these words were omitted? It would be that the man against whom a subsequent order on disobedience of this notification is passed, for giving security or for confiscating the Press, he will have a right of appeal to the High Court under the Act itself. We have heard times without number that the right of appeal, as it stands at the present moment, is more or less of a shadowy character, but by insisting upon the inclusion of these words, what is the Government going to do? It is going to take

away the right of appeal altogether and does not honestly say that the inclusion of these words means that the right of appeal is really taken away. Then, Sir, take it in another way. It really militates against the symmetry, if I may say so, of the collocation of the words in the parent section which really hurts one's artistic conscience so far as legislative measures are concerned. If the Hon'ble Member will kindly look at section 4, as it at present stands, "whenever it appears to the Local Government that any printing press in respect of which any security has been ordered to be deposited under section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which—

(*a*) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence, or

(*b*) directly or indirectly express approval or admiration of any such offence, or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence,

(*c*) to seduce any officer, soldier or sailor or airman in the Military, Naval or Air Force of His Majesty or any Police Officer from his allegiance or his duty, or

(*d*) to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India or any class or section of His Majesty's subjects in British India or to excite disaffection towards His Majesty or the said Government, or

(*e*) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or

(*f*) to encourage or incite any person to interfere with the administration of the law, etc.,

(*g*) to induce a public servant or a servant of a local authority to do any act, etc.,

(*h*) to promote feelings of enmity or hatred between different classes of His Majesty's subjects, or

(*i*) to prejudice the recruiting of persons to serve in any of His Majesty's forces, etc.

In none of these clauses, Sir, are the words "in the opinion of the Local Government" present. You are making an addition in (*i*) to section 4 of matters coming under section 2A and you are bringing in

the words "in the opinion of the Local Government." As I have pointed out, these words do no good to the Government at all because after all the Local Government must prohibit what in their opinion is offensive, but it does this mischief that it really takes away the right of appeal. As I am quite sure, the Hon'ble the Home Member will be the first person to admit that even the Local Government is not above making mistakes. Mistakes regarding the Press Act have been rectified by the High Court before this. Therefore, I submit that if you take away the right of appeal by means of inclusion of these words, you are really doing something which was neither good nor fair nor honest nor something which is at all necessary from your point of view. Then from the other point of view, will the action of the Local Government be hampered in any way if these words are deleted. The Local Government issues a notification that such and such class of information has got to be taken away because it is in their opinion offensive. If there is a breach of that notification, and if on that breach the Local Government passes a direction under section 4 that the Press should give security or be confiscated or something else, then if the keeper of the press appeals to the High Court, at that stage the opinion of the Local Government will have to be tested by the High Court. That is to say, at the lowest computation, it will be after two months from the date of the issue of the notification. Even if it were ten days, how is that hampering the action of the Local Government in issuing the notification? I submit that it will not hamper the powers of the Local Government in any way. They can issue their notification, and if in their opinion a matter should not be published, then in case of a breach of that notification only, if the Local Government wants to punish the press according to the law, and does punish it, the keeper of the press will have a right of appeal to the High Court. This final right of appeal is absolutely taken away if these words are retained. We have heard that the first thing in British jurisprudence is to give the accused a right to be heard. That has been the basis of all sorts of penal laws in England and in places where the English system of jurisprudence prevails. I submit that it is impossible to say to a Britisher or an Englishman that the accused will not have the right of appeal to the proper authorities, and why after all the Local Government should be afraid of this right of appeal to their own High Courts? I submit, Sir, it is impossible for any Britisher or any Englishman to say that an accused will not have the right of appealing to higher authority and why after all should the Local Government be afraid of having this ultimate appeal to their own High Court. Why should they not have confidence in the High Court when the High Court may sit in revision within a few months after the offence when the matter is brought before them, and when the High Court will have the right to judge whether the opinion of the Local Government was correct or not. I submit that if the Government does not accept this

amendment but persists in its draft, it will be giving a handle to people to say that the lust of power of the Government is really at the bottom of this legislation. They want us, the Legislative Council, to help in maintaining law and order, and is it really maintaining law and order when you deny the jurisdiction of the highest court in the land to test your action? I submit it is really incumbent on the Government to accept this amendment and to say—

Keep true to laws which make for peace and order in the State,
But let the law of love increase and oust the law of hate,
So that the lust of power may cease and terror abdicate.

Babu JATINDRA NATH BASU: I have already stated that the wording of many of the provisions of this Bill is too vague for a court of law. This clause is one of those which presents a psychological puzzle. It will be a strain on the administrative capacity of those attempting to apply this clause in practice. Sir, in a matter of this description there is one aspect of psychology which should not have been neglected. I am referring to the psychology of the people on whose statute book this provision is going to be placed. The mentality of the people of this country is such that they have always set greater value upon judicial decisions and findings than upon executive orders. I will give one or two small but well-known instances. King Mahmud of Ghazni was a ruler well known in history; he came to know that one of his sons had indulged in some youthful escapade which caused injury to some person. The king might have dealt with the matter by an executive order, but he immediately sent his son to the *Kazi* for trial so that he and his people might be satisfied. There are many such instances in Hindu and Muhammadan history. King Ram Chandra, the hero of the great epic *Ramayana*, subjected his beloved wife Sita, of whose innocence he was satisfied, to an ordeal by fire (A VOICE: "That was very wrong.") in order to satisfy the opinion of the people. In the clause we are dealing with questions affecting very grave matters which concern as much the lives of the people as of those who are in charge of the administration. It is proposed that such questions are to be dealt with almost entirely by executive orders. I could have understood such a provision if it had been intended to set up something like a Board of, say, one or two leading pressmen, consisting altogether of not more than two or three persons, to judge upon the materials in respect of which the Government wanted to issue notifications prohibiting publication. But it appears that there is no provision in the Bill itself for consulting public or expert opinion regarding the matter to be prohibited from publication. Sir, the proposed provision will be treated as a serious encroachment upon the rights which have been enjoyed for such a length of time that they have become a part almost of the life of the people, and parting with

such rights will be a deprivation which will be very keenly felt, and the effect of it will probably be much worse than the good that is intended to be obtained by the use of this provision. Sir, I therefore support the amendment moved by Mr. N. K. Basu.

Khan Bahadur Maulvi AZIZUL HAQUE: I would not really have taken part in the debate but for my friend Mr. N. K. Basu's statement in so far as the collocation of section 4 is concerned. I might draw attention I am not entering into the merits of the question, but am only discussing the legal aspects of it when I say that in section 4 of the Indian Press Act there are certain kinds of offences which are controlled, but most of these are in the nature of control which are done only after those particular acts are finished. In other words, if a printing press incites, encourages or tends to encourage the commission of an offence or seduces an officer, the Local Government have the right under the Act to intervene after the publication is done. In other words, after articles are published, it is then only that Government can come in and put section 4 into operation. So far as the new clause is concerned, it is in the nature of a preventive section. As has been pointed out, it is with a view to stop such publication that this section is intended. That being so, surely there ought to be some difference between a section which comes into operation after the particular act is finished, and another section where the Government wants to step in before publication. So far as this is concerned, I may point out to Mr. Basu that it is thus possible to find out a difference there. The second difference is that in section 7 there are the words "in the opinion of the Local Government." "In the opinion of the Local Government" is only in section 2A. The violation of it can bring it within the purview of section 4 of the Indian Press Act, where it will be noticed, it is not said "in the opinion of the Local Government." In section 7, which is section 7 of the Press Act to be amended, it is to be noted that whoever "gives any information in contravention of a notification published under section 2A." Now, Sir, while utmost care should be taken to see that the liberties of the press are not interfered with as far as practicable, the only question before the House is whether in view of the terrorist movement, such clause should be there. If the House is agreed that these are necessary the point to which I wish to draw attention at this stage is that unless the words "in the opinion of the Local Government" is there, it will be difficult for the Local Government to act at all under section 2, and it is much better that this section should be done away with rather than that the words "in the opinion of the Local Government" be deleted. If it is at all intended that the Local Government ought not to have the power to curtail the liberty of the press within the meaning of this section, it ought not to step in at all. But surely if it is intended that the Local

Government should act in its capacity to prevent such recruitment to the terrorist movement, it is necessary that these words "in the opinion of the Local Government" should be there. In spite of what Mr. Basu might say, he will admit that I have at least not given support to the various sections of the Bill without closely scanning all these sections, though I admit at times that the press comes in such a propaganda that one is tempted to feel nervous. It is unfortunate that a section of the press is so blind to the proper assessment of the political situation in the country that there is a tendency to make them merely "views" papers instead of being newspapers. It is expected that the press should give a fair version of all the news. I will give you a concrete example of what I mean. When I read a report of the discussion of this debate, what did I find in a very important paper? I shall not mention its name. Non-officials took part in the debate yesterday on both sides. The debates by those who opposed some of its provisions were more fully reported, but statements of those who supported have been merely mentioned in one sentence, namely, such and such supported the Bill. I put it to you whether this is really fair to both sides; if you think that one side ought to be well reported, the other side should not be finished off in one sentence saying "such and such, etc." There may be the indirect effect of publications of this nature—I mean the indirect effect if any propaganda is carried on in this nature. Sir, if it is necessary for the purpose of checking the terrorist movement to stop one-sided versions, you require some control. I will not mention about Mr. Banerji who referred to many things, but may I quote from the same paper to show the tendency growing in some of the papers, and which is most unfortunate——

Mr. NARENDRA KUMAR BASU: May I ask for a ruling whether articles from newspapers especially in connection with any discussion of a particular amendment is permissible?

Mr. PRESIDENT: I think Mr. Basu is right in this connection. We are only referring to the opinion of the Local Government; you need not refer to any other matter.

Khan Bahadur Maulvi AZIZUL HAQUE: It is open to me to develop my point by saying that a section of newspapers have a tendency of doing this. All I have to say is that sometimes some of the papers, I don't say all the papers, have a tendency to misrepresent facts which should be checked on certain matters. For example, we are told that the debates in this Legislative Council are a mockery, a pretence and a make-believe, and "whatever the Home Member is bent on having, he gets the obliging Council to endorse." The next is "the shameful betrayal of public interest" shown by the House; "if the elected members were of the right sort and if they were patriotic and had grit and courage things would have been different," that "they want to basque in the official sunshine." I put it to Mr. Basu to say

whether it is desirable in the interests of the country that the acts of legislators and representatives of various opinions have come in,—they are not entitled to express in their own way what they wish, and if they do so, is it just to them that their motives on such and such motions should be misrepresented? It is most undesirable. My friend is a criminal lawyer. Does criminal law ever attribute any motive at all, unless it is fully clear. In politics this is a very undesirable factor. Unless you have good evidence, I think political life will be impossible if you rush to the press and attribute false motives to everyone. When working in this Council we might consider certain sections bad; others may not consider them so. In dealing with the terrorist movement, some may consider that this is a remedy for terrorism; others may not think so, but there is certainly no occasion for attributing motives, far less for my friend to attribute motives of members of this House in terms what I really think are not consistent with the dignity of this House.

SATISH CHANDRA RAY CHOWDHURY: I think a good deal of heat has been raised over certain expressions of an hon'ble member. The result is that the real thing has been lost sight of. Unless the Government claims a monopoly of wisdom, it passes our comprehension why the expression "in the opinion of the Local Government" should be inserted in this section. What is sought to be prohibited is the publication of certain information which is likely to create an atmosphere favourable to the gaining of adherents to the terrorist movement. On this matter opinions are likely to differ and courts also may hold different views. Government may be misled in thinking that certain information published may have that tendency, because Government very often are guided by the reports of persons who have preconceived ideas, and so it is not impossible for them to lose that balance which is essential in the interpretation of words, expressions and documents. That being so, I do not understand how the interest of this law will suffer, if these words are omitted and the courts are left free to come to their own judgment on hearing both sides. There is no provision here that Government will hear both sides before coming to a decision, but when the matter comes before a court, both sides are heard and the courts will be in a better position to form a judgment whether a particular act is likely to create an atmosphere favourable to the terrorist movement. It will also have the effect of infusing confidence into the public mind. In working such a measure circumspection is necessary on the part of Government. The real intention of Goverment being the suppression of terrorism, is it not necessary that Government should act in a manner which would not raise any suspicion in the mind of the people? The dictum which has been often emphasised by the British courts is that not only justice should be done, but that it should be done in a way so that all

parties may feel that real justice has been done. Why that dict is there I think the British members of the Council will be in a bet position to say, but it has been the practice and usage for ma centuries. I do not see what harm will be done if the matter is l to be interpreted by the highest court. As a matter of fact, we fi that there is an unconscious tendency on the part of Government belittle the importance of the law court which they have establish They call it the palladium of justice, but there is a tendency day af day to take us away from that palladium of justice. There is o one authority and that is the authority of the executive which has t last word when the lives and liberties of the subjects are concern The freedom of speech and expression are the most valued things i democratic constitution, and we are going to have a democratic cons tution very soon, but we shudder sometimes to see the shadows c upon us of the democratic constitution that we are going to have a which shows the nature of the democracy. If the Government wa us to have the idea that although they may differ from us, they actuated by the best of motives, then the least they can do is to rej all other amendments and accept this one and prove their *bonâ fid* This will be the least safeguard to the poor press who to-day are ve nervous. I may say that the press is so very nervous on account of t fate that is hanging over them that even sometimes they betray nervo ness in reporting in full the speeches that are made in this Council. think that if any section of the public is at present demoralised it the press. I may quote here the opinion of one of the best historia who is held in high esteem not only in India but also in England a whose name is well known to you all. He says that the effect of dras measures is sure to demoralise Government and its people. T evidence of decadance of the people is visible not only in the Coun but also in the utter demoralisation of the press. The press nov days do not venture to come out even with the bare facts which a necessary for the protection of our lives and liberties. That being it is the last straw on the camel's back. After the Bill has been pass into law, the press will go out of action and it will be left entirely the executive to manage as best as they can. I submit that Gover ment ought to show their *bonâ fides* by accepting this amendment.

Babu HEMCHANDRA ROY CHOUDHURI: Mr. Deputy Preside Sir, in supporting the motion for the deletion of the words "in the o nion of the Local Government" I hope it will not be necessary for m after the two recent cases—one in the High Court and the other in t Police Court—to take up much of the time of this House to press n point. These words have been deliberately inserted by bureaucra who in the plenitude of the power they enjoy, consider themselv infallible. But, alas for their conceit, what do we find? Only t other day in an appeal preferred by a newspaper against the order f

forfeiture and enhancement of security deposit the Advocate General, who represents the legal conscience of the Government, got up and said that he would not oppose the appeal! What a staggering blow on the prestige of the Government! In another case which happened on the day this House began to consider the Bill as amended by the Select Committee, the Chief Presidency Magistrate "on perusal of the official note" reduced the demand security of Rs. 1,500 each and asked the keeper of the press and the printer of the paper to deposit only Rs. 100 each which had been declared forfeited.

I ask the Hon'ble Member in charge of the Bill if after these instances—sorry instances—he would still persist in denying the newspaper press of Bengal the right to appeal against executive order? One of the Hon'ble Members of the Cabinet of His Excellency the Governor of Bengal has come fresh from the Hon'ble High Court. I appeal to him to uphold the traditions and safeguard the powers of the High Court and advise his friends not to replace trial in a court of law by an executive order.

I ask the Government, Sir, why do they insist on denying the press the right of appeal against their judgment? There may be several reasons. It may be that the Executive have no confidence in the competency of the Judiciary. It may be they want to gag the press and arrogate to themselves the power which should not belong to them; in other words, they want to purloin the powers of the courts of justice. It may be they want to cripple the Judiciary and aim at ruling by ordinance. A journalist says in his book "Press and Press Laws" that "the British in India have an almost superstitious fear of a free press in a conquered country." The attitude of the bureaucracy in the present case proves the correctness of the assertion.

If in the opinion of the Government the publication of a certain class of news may produce dangerous or undesirable consequences, let them notify it in a circular to the press. If the papers transgress the bounds of the order, they will do so deliberately and with a full sense of the risk they run. But you cannot, and you should not, tamper with the freedom of the press—the liberty which is not synonimous with license. You have kept in internment hundreds of young men for unknown and practically unknowable offences. Do you think that the country will shower blessings on you if you attempt to prevent their legitimate grievances from being published in the press? Would you not then lay yourselves open to the charge that you may be guilty of offences against humanity which you would shudder to find disclosed?

Sir, I consider it to be a masterpiece of melancholy meanness to muzzle the press. Laws you have galore to control the press and you have a vigilant press officer to exert a sobering influence on the press. But to include this section as it stands in this ominous Bill would be

to encroach upon rights we cherish, to cripple the power of the law courts, to put a premium on the possibility of justice being denied to the people and thus bring disgrace on the Government.

Sir, I ask the Government to accept this amendment in their own interest. For after insisting upon the retention of the obnoxious words and alienating the sympathy of the people, they cannot hope to secure our co-operation. We are ready, we are willing, we are eager to co-operate with Government to uproot terrorism, to create that atmosphere in which terrorism must get asphyxiated. Do not, I say, deprive the press of the right to appeal against Executive order. The retention of that right will make you more careful and preclude the possibility of your getting intoxicated with power and turning into erring ways. It will satisfy the public. It will increase their faith in British Justice.

I hope, Sir, I have been able to convince the occupiers of the Treasury Benches that they should agree to delete the words "in the opinion of the Local Government." And I hope they will not behave like the deaf adder that stoppeth her ear and will not hearken to the voice of the charmer charming never so wisely.

Sir, I cannot do better than conclude with the memorable words of Gladstone—words uttered in the British House of Commons more than half a century back when he raised his voice in protest against Lord Lytton's notorious Indian Vernacular Press Act:—

"I look upon this (the insertion of these words) as an error, and my sincere purpose and design are to offer a contribution towards keeping the consequences of that error within the narrowest possible bounds."

The Hon'ble Mr. R. N. REID: I do not think anyone has so far traversed the proposition on which this clause is based; that is the sole purpose of this clause is the necessity of Government being aided —and I hope they are getting such aid nowadays—by public opinion, and that, aided by such public opinion, they should do everything they possibly can to prevent the corruption of the young men of Bengal and to prevent them from being drawn into terrorist conspiracies; and this clause offers one way in the opinion of Government by which this purpose can be carried out. It is a fact, and I do not think anyone will seriously dispute it, that immature and susceptible minds can be carried away by things published in the press, and by statements and information which tend to create in their minds feelings of sympathy for those who deserve no sympathy, which tends to pervert that natural desire for hero-worship which is in every boy's mind and which tends to prevent it to utterly wrong directions. That, Sir, is the meaning of this clause and it is for this reason that it is put in here.

The next point I should like to make is that if Government be given this power as a preventive measure to prevent publication—that is the whole point of this clause, it is preventive publication—surely they should also be entrusted with the duty of deciding what sort of information should be prohibited. I do not claim, as one speaker said, the monopoly of wisdom on the part of Government, but I do claim that in this respect Government are in a better position than any judicial body to decide what kind of information is or is not likely to pervert the minds of the young. Government have possession of information, not all of which can be given to the public but which they have no reason to disbelieve; and it is on this information and also on their general knowledge and experience of the terrorist movement and of the work which is going on in the matter of recruiting young men to the terrorist movement, it is on this information that they must be trusted to make the decision as to what should be prohibited and what should not be prohibited. Speaking quite frankly, Sir, I say that if it came to a question of bringing up cases of this sort before a judicial body—I take it that that judicial body would be the High Court in this case—that judicial body would quite genuinely possibly come to a totally different conclusion to what Government came to, because they would not be forming their opinion on the same volume of knowledge and information that Government had, simply because it would not be possible for them to have that volume of evidence before them for obvious reasons. Therefore, if the words "in the opinion of the Local Government" are omitted, it is quite possible that the whole purpose of the clause would be stultified. That is a perfectly clear point, and I make no secret about it. Government are very anxious indeed that the purpose of this clause should not be stultified, because they do hold that it is most frightfully important that we should make every possible effort to prevent this perversion of young men of Bengal. And if there is one thing that may make any difference to that, it is certainly the prevention of the publication of subversive stuff in the press. It is at any rate one line of attack that Government feel bound to take if they are to fulfil their duty of trying to prevent the spread of the terrorist movement. I beg to oppose the amendment.

Mr. Narendra Kumar Basu's motion being put, a division was taken with the following result:—

AYES.

Bakshi, Maulvi Syed Majid.
Banerji, Rai Bahadur Keshab Chandra.
Banerji, Mr. P.
Barman, Babu Promhari.
Basu, Babu Jitendra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Babu Kishori Mohan.
Chaudhury, Maulvi Sayed Ahsar.
Ezaddi, Maulvi Nur Rahman Khan.
Fazlullah, Maulvi Muhammad.
Khan, Maulvi Tamizuddin.
Maiti, Mr. R.
Mukhopadhyay, Rai Sahib Sarat Chandra.
Poddar, Seth Hanuman Prasad.
Raikat, Mr. Prasanna Deb.
Ray, Mr. Shanti Shekhareswar.
Ray Choudhury, Babu Satish Chandra.
Rout, Babu Nagendra.
Roy Choudhuri, Babu Nem Chandra.
Samad, Maulvi Abdus.

NOES.

Afzal, Nawabzada Khwaja Mohammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emadeddin.
Armstrong, Mr. W. L.
Baksh, Maulvi Shaik Rahim.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Basiruddin, Khan bahib Maulvi Mohammed.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. R. G. A.
Faroqui, the Hon'ble Nawab K. G. M. Khan Bahadur,
Fawcus, Mr. L. R.
Ferguson, Mr. R. N.
Ghose, the Hon'ble Sir Charu Chander.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir. Abdelkarim, of Dilkuar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hossain, Nawab Musharruf, Khan Bahadur.
Hossain, Maulvi Latafat.
Karim, Maulvi Abdul.
Law, Mr. Surendra Nath.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Miller, Mr. G. C.
Mitter, Mr. S. C.
Momin, Khan Bahadur Mohammad Abdul.
Mullick, Mr. Mukunda Behary.
Nag, Reverend B. A.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Quasem, Maulvi Abul.
Rahman, Mr. A. F.
Ray, Babu Khetter Mohan.
Reid, the Hon'ble Mr. R. N.
Ray, the Hon'ble Sir Bijoy Prasad Singh.
Ray, Mr. Saileswar Singh.
Ray, Mr. Sarat Kumar.
Ray, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarker, Rai Bahadur Raboti Mohan.
Sen, Mr. B. R.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 21 and "Noes" 54, the motion was lost.

Maulvi SYED MAJID BAKSH: On a point of order, Sir. In connection with this amendment which has just been lost, there were many speakers as you noticed perhaps who were willing to speak; but since the Government Member wanted to reply, of course, there was no harm in calling upon him to reply. I may state, however, that it is the custom in this House, and you along with others must also have seen, and it has happened in many cases, that if a discussion has not been sufficient and the Government Member gets up to reply, the custom is that others are allowed to speak after the Government Member has spoken; so that if anybody else on the Government side wants to reply to any new points, that may be done by a member other than the Hon'ble Member who has already spoken. In such cases it would be very kind of you either not to ask an Hon'ble Member of Government to reply before an amendment has been sufficiently discussed, or to allow others to speak after he has replied.

Mr. DEPUTY PRESIDENT: Order, order. I think the Chair can look after that.

Mr. DEPUTY PRESIDENT: I would like to have a general discussion on amendments Nos. 76-82, but they will be put separately.

Babu JATINDRA NATH BASU: There is a similar amendment to be moved by my friend Mr. Narendra Kumar Basu later. I therefore do not move my amendment.

Mr. NARENDRA KUMAR BASU: Sir, I beg to move that in clause 6, in proposed section 2A, lines 7 and 8, for the words "in the opinion of the Local Government tends to create an atmosphere" the word "is" be substituted.

I beg also to move that in clause 6, in proposed section 2A, lines 8 to 10, for the words "tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement" the following be substituted:—

"expresses approval or admiration of any person against whom an order under section 2 of the Bengal Criminal Law Amendment Act, 1930, has been made."

I beg further to move that in clause 6, in proposed section 2A, lines 8 and 9, for the words "tends to create an atmosphere favourable to the gaining of adherents" the words "encourages or incites to recruitment" be substituted.

Sir, as the House will have seen, these amendments Nos. 78 and 79 are alternatives to the wording of the clause as it stands in the Bill, but the first one, *viz.*, amendment No. 77, that I am moving that for the words "in the opinion of the Local Government tends to create an atmosphere," the word "is" be substituted. That is quite a different matter altogether. If this amendment is accepted, the clause would read like this: "The Local Government may, by notification in the local official gazette, prohibit either absolutely or subject to such conditions and restrictions as may be specified in the notification, the publication in any newspaper, book or other document of any class of information which is favourable to the gaining of adherents to the terrorist movement." Sir, in moving this, I must say at once that first, I want to do away with the words "in the opinion of the Local Government," and then to make it definite. To say, that something which tends to create an atmosphere favourable to the gaining of adherents shall not be published, is to say something which nobody can understand. Therefore, the Local Government should only prohibit such things, imparting such information as is favourable to the gaining of adherents to the terrorist movement. I must say at the outset—and I say so more in sorrow than in anger—that when the Hon'ble the Home Member in his reply to the last amendment said that by giving a real right of appeal to the High Court, the purpose of the section will be stultified. Sir, the Hon'ble Member has done more to stultify the Government and has created a bitter atmosphere for gaining adherents to the terrorist movement by his own remarks. Therefore, I say more in sorrow than

in anger that this attitude of the Local Government not to allow their actions to be criticised weeks or months after the event by a competent judiciary is something which is deplorable. I submit, Sir, non-official members of the House—Indian as well as non-Indian—ought to say that this attitude of the Local Government should not be encouraged by the non-officials. For the Home Member—I shall not use the word if it is unparliamentary, but I do say that for the Home Member to have the effrontery to rise in a House of Legislature and to say that they want to safeguard their actions from scrutiny by the highest judiciary in the land is, I submit, an attitude which no self-respecting man can subscribe to. I submit, Sir, in no other place in the world would a Member of the Government have had the audacity to rise and say that "we are deliberately trying to keep out the High Court from judging our action." I submit, Sir, this shows to what depth we have fallen that we can swallow these words and not only not protest against them, but give our approval to them by voting with the Member of Government who makes that remark. Sir, so far as the present amendment is concerned, I submit that after the expression of the views of the Local Government, it is no wonder that anything under the sun will be something to them which tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement. If we have this spectacle of a non-official member rising in the House and saying that the meagre reporting of the opposition speeches is something which is sought to be remedied by this clause, if we have the spectacle of a non-official jurist getting up and saying that it is the purpose of all law to see that newspapers publish correct reports and not give their opinion on anything, it is no wonder that the Local Government which has for its advisers men of that ilk will fight shy of the High Court. I submit that it is absolutely necessary in the interest of the law-abiding population, it is absolutely necessary in the interest of the freedom of the press—and by freedom I do not mean license, let that be understood by the House, I am for the true freedom of the press and not for its license—it is absolutely necessary that the power of the Local Government to prohibit the publication of news should be strictly limited, and it should be made as definite as possible, and it is therefore that I am proposing the first of these amendments. But if the House in its superior wisdom thinks that the amendment is not to be accepted, then as an alternative I move my amendments Nos. 78 and 79 for the acceptance of the House.

Mr. S. M. BOSE: Sir, may I be permitted to support the amendment No. 77? I would not move my amendment No. 82.

Mr. DEPUTY PRESIDENT: Yes, you can.

Mr. S. M. BOSE: I beg to support the amendment moved by Mr. N. K. Basu. May I, Sir, in passing deprecate the violent and

unnecessary attack made last evening, when this clause 6 was being discussed, on a high Government official who was, according to his own light, trying to do his duty. The strength of our case against clause 6 in no way depends upon violent speeches of this kind. They are unnecessary and irrelevant and only tend to cloud the real issue. Should the press be further handicapped without adequate safeguards? Let us try to devote our attention to this important point. I need not dilate here on the services rendered by the press to the public as well as to the State. It reflects the public mind, and it acts and reacts on public opinion. To hamper the press unnecessarily is, I think, a grave wrong, not only to the public but to the State as well. But, Sir, lately many press regulations have been made which have added terrors to the life of the editors. The lot of the journalist is not a happy one. Here comes another attempt to add to his unhappiness. Last evening the Home Member and Khan Bahadur Azizul Haque admitted that this was a very extraordinary clause, but said that having regard to the exceptional circumstances now prevailing, this unusual clause ought to be passed. The Home Member told us further not to be downcast, because this was only a temporary measure. For the Press Act, 1931, was to expire in 1935. But we all have had the experience of temporary Acts being made permanent, and in this Bill we have two examples. So, that is no solace to us. I assume for purposes of my argument that whatever was stated by the Home Member as justifying the need for this clause is absolutely correct. For my purpose I need not go beyond what he said. Then, I ask why should you omit safeguards against abuse of the exceptional powers taken by the Local Government? We are all nowadays familiar with the word "safeguard," when exceptional powers are sought to be given. Why should there not be such safeguards here? Why should there not be a salutary check by the High Court? As we have already seen, in section 23 of the Press Act, an appeal is allowed to the High Court on certain matters dealt with in clause 4—forfeiture order. There the Local Government has got certain definite things to decide on a very narrow issue whether there is encouragement of commission of murder. Even on that definite matter and narrow issue, an appeal is allowed to the High Court. But here, though very vague and wide powers are sought to be taken under clause 6, where the words are admittedly and intentionally made as wide, as vague and as far-reaching as one can possibly imagine, no appeal is to be allowed. What is the logic of this? I do not understand. I appreciate the point made last evening by Khan Bahadur Azizul Haque that the object of this is to prevent the mischief in advance, but the omission of the words "in the opinion of the Local Government," etc., would not prevent publication. The fiat and warning of the Local Government issued to the Press will be, I think, invariably regarded. The Hon'ble Member will admit, I think, that in recent

times there has been a very great improvement in the tone of the press. The press, I think, for various reasons is very anxious to help the State, and I cannot possibly believe that by the omission of these words the press will refuse to follow the advice or the order of the Government. Further, the very fact that the opinion of the Local Government is not final will make the Government very careful. There is always danger that absolute power may be abused through lack of due care. So I, on these sure grounds, support this amendment.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: I understand that Mr. Narendra Kumar Basu has moved this amendment in a modified form. It now runs: "that in clause 6, in proposed section 2A, lines 7 and 8, for the words 'in the opinion of the Local Government tends to create an atmosphere favourable to the gaining of adherents.' " With regard to this I may say that I rise to support him whole-heartedly. I cannot understand how my friend Khan Bahadur Azizul Haque can say that there should be no criticism in the press of the actions of a public man. A healthy criticism is good for the development of the country. It is not the object of the Bill, or of the Government, or of us to suppress public opinion altogether. The only object of the proposed Bill is that things should not be published in such a way as to create an atmosphere which will excite murder or gain adherents to the terrorist movement. As the Khan Bahadur says that the press should not criticise anything, is it his idea that the press should not write any articles. Is it his idea the press should exist only for the publication of certain information that has been censured and passed by the Censure Officer and for nothing else? That has not been the intention of Government so far as I can gather, nor can we find anything in support of such a view in the Bill. I am sorry to see that the Khan Bahadur, in his zeal for supporting the Government, has gone so far away from the intentions of the Bill before us.

With these words I support Mr. Basu's motion as amended.

The Hon'ble Mr. R. N. REID: As I see it, amendment No. 77 of Mr. N. K. Basu is in fact the essence of amendments Nos. 73 to 75, that is to say, it mainly centres round the words "in the opinion of the Local Government," and I think I am right in saying that both the members who supported the motion argued on the same lines. Still, I do not think I should waste the time of the House and repeat the arguments which I made just now on the question whether the words "in the opinion of the Local Government" should not or should be in the Bill. But I oppose the substitution of the words "tend to create an atmosphere," and must also oppose amendment No. 78. On the other hand, if it is in order to discuss all these motions together, I must say at once that I accept the amendment No. 79 so that the words should

read: "Tends to excite sympathy or secures adherents to the terrorist movement." I wish I could go further to meet Mr. S. M. Bose in those views which he has presented to us in such a pursuasive and well-reasoned manner, but I think I have already explained how impossible Government find it to accept any amendment which would detract from the powers which they propose to take, for those cogent and important reasons which I have explained before. It is a preventive measure, and it is an endeavour, as far as we can do it, to prevent the spread of this movement and increasing recruitment of young boys to this movement. I, therefore, beg to oppose Nos. 77 and 78, but will accept No. 79 in its modified form.

Mr. Narendra Kumar Basu's motion (No. 77) being put, a division was taken with the following result:—

AYES.

Bakshi, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Satindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Babu Kishori Mohan.
Chowdhury, Maulvi Nurul Absar.
Fazlullah, Maulvi Muhammad.
Haque, Kazi Emdadul.
Maiti, Mr. R.
Roy, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Raut, Babu Hanseni.
Ray Chaudhuri, Babu Ram Chandra.
Samad, Maulvi Abdus.
Shah, Maulvi Abdul Hamid.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Armstrong, Mr. W. L.
Bakshi, Maulvi Shaik Rahim.
Bal, Rai Sahib Sarat Chandra.
Barman, Babu Pramhari.
Barma, Rai Sahib Panchanan.
Basir Uddin, Khan Sahib Maulvi Mohammed.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Nafizar Rahman.
Cohen, Mr. D. J.
Dain, Mr. B. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. R. G. A.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. N.
Ghose, the Hon'ble Sir Charu Chunder.
Ghaznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dhaka.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Law, Mr. Saroindra Nath.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Mullick, Mr. Mahanda Bahary.
Ray, Reverend B. A.
Roudy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Qasem, Maulvi Abul.
Rahman, Mr. A. F.
Ray, Babu Khetter Mohan.
Reid, the Hon'ble Mr. R. R.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Satiswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. N.
Saadatullah, Maulvi Mohammed.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Singha, Mr. Arun Chandra.
Sulaiman, Maulvi Muhammad.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deB.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 16 and "Noes" 59, the motion was lost.

Mr. W. H. THOMPSON: On a point of procedure, Sir. I would propose, and I am sure my suggestion will be supported by many other members, that we should have an all-night sitting and finish with this Bill. It is a suggestion I have made more than once before, and I make it again now. We are tired of this waste of time, which we can only cut short by the method I suggest.

Mr. SHANTI SHEKHARESWAR RAY: May I make a statement? I strongly object to this. It is easy for those people who can take their food in the House to continue here, but I cannot take my food away from home.

Mr. DEPUTY PRESIDENT: I will consider that.

Mr. Narendra Kumar Basu's motion (No. 78) was put and lost.

Mr. Narendra Kumar Basu's motion (No. 79) was then put in the following amended form and agreed to:—

"That in clause 6, in proposed section 2A, for the words 'create an atmosphere favourable to the gaining of' the words 'excite sympathy with, or secure' be substituted."

(The House was adjourned for 15 minutes.)

(After adjournment.)

Mr. SHANTI SHEKHARESWAR RAY: I beg to move that in clause 6 after proposed section 2A, the following be added, namely:—

"Provided that the Local Government shall not prohibit the publication of the proceedings or part of the proceedings of the British Parliament, Indian Legislature and Local Legislatures in India."

In this clause the Government of Bengal want to take very wide powers. They want that by notification in the local official gazette they can prohibit either absolutely or subject to such conditions and restrictions as may be specified in the notification, the publication in any newspaper, news-sheets, pamphlets or leaflets of any class of information which in the opinion of the Local Government tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement. This was as it stood in the original Bill, but the latter portion I understand has been modified by a short-notice amendment carried in this House with the support of the Government. We are going to give Government very wide powers, but I would like to point out that there should be some limit to the power that the Legislative Council can and should entrust to Government. The position in respect to the Legislative Council is this. Under the present constitution certain subjects are known as transferred subjects and certain subjects as reserved subjects. In respect of the reserved subjects the ultimate

authority lies with the British Parliament, but in respect of the transferred subjects, under the Government of India Act certain powers have been delegated to the representatives of the people in the Legislative Council and His Excellency the Governor with the help of the Hon'ble Minister who owes his position there on the basis of support from the Council carries on the administration. It is also stipulated that with the introduction of the Legislative Council in this country the people of the country should be trained to exercise their responsibility in the administration of the country. I may refer in passing to the "Instructions to the Governor." You will find a reprint of the same on page 332 of the Bengal Legislative Council Manual. There we find that it is necessary and expedient that those now and hereafter to be enfranchised shall appreciate the duties, responsibilities and advantages which spring from the privilege of enfranchisement, that is to say, that those who exercise the power henceforward entrusted to them on returning representatives to the Legislative Council being enabled to perceive the effects of their choice of a representative and that those who are returned to the Council being enabled to perceive the effects of their votes given therein shall come to look for the redress of their grievances and the improvement of their condition to the working of representative institutions. That is the constitutional position to-day. In asking the House and the Government to accept my amendment I am doing nothing but asking them to support the position as stated in the Instructions to the Governor and as intended by the Government of India Act. If the discretion of the Local Government in the matter of prohibition is not to be limited so far as the publication of the proceedings or part of the proceedings of the British Parliament, Indian Legislature and Local Legislatures in India are concerned, it will greatly hinder the propagation of that ideal, the encouragement of that wish of His Majesty the King Emperor. Coming to day-to-day administration, there may be occasions when it may be our painful duty to bring to the notice of the House, the Government and the country acts of oppression and misuse of powers on the part of Government servants. It is quite natural that the members of the Government, the present beaurocracy, shall feel inclined to draw a veil over their misdeeds and they may be tempted to prohibit the ventilation of such grievances by publication of the proceedings of the Legislative Council. Should we give them an opportunity to do that? I submit that if we the members of this Council are to discharge our responsibility and duty faithfully, we should be given an opportunity to bring our activities, our viewpoints before the public as well as the members of our constituencies. Anything that prevents us from doing that would be a great encroachment not only upon the privileges of the citizens, but also the members of this House. I would ask you to consider the matter very dispassionately. Government may take the view—well, have confidence in us and we will do nothing,

wrong; we are not going to interfere with your normal activities; we will only step in where there is an attempt to create disaffection or commit sedition. I beg to submit that Government need not have any apprehension on that score. There can be no sedition, no encouragement of disaffection in this House because you, Sir, are here to control the debates of this House and you have full authority to pull us up if any one of us feels inclined to commit sedition or utter any words that may be likely to create disaffection. The debate may be there and there can be no objection to the publication of a debate, if there is no sedition. But the Government's position is likely to be that perhaps members of this Council by their speeches may commit sedition or at any rate encourage sedition in this House. But I would like to point out that there can be absolutely no misapprehension on that matter, and if the Government feels any misapprehension on that point, that will be casting a slur not only on an individual member of the House but also on the Chair who guides the deliberations of the House. Again, Sir, there is a provision in the Act that if any member expresses any objectionable views you have the right to expunge those remarks from the official proceedings of the House. Then there is a further safeguard: We cannot bring up any matter that is not of public interest. There is the President's power to disallow it, and, if the President has any sympathy towards the terrorists there is His Excellency the Governor who, in exercise of his over-riding powers, can disallow such matters. So, Sir, with so many safeguards, why should you be apprehensive of the publication of the debates of the Legislative Council? You can be afraid of them only on this score, namely, that you do not like criticisms and that you want to draw a veil over your misdeeds or that you do not want your activities to be discussed in public. You do not share the views of His Majesty the King Emperor or you do not accept the constitution as it at present stands. If you are prepared to run the present constitution—not the constitution that will come in the future—you ought to have no misgivings, no scruples, no objection to the publication of the proceedings of the Legislative Council. Before this our grievances could be ventilated in the British Parliament, especially in the House of Commons. I can recall that years ago members of the Labour Party took up the cause of aggrieved persons in this country in the House of Commons, and even now such grievances are ventilated there, namely, grievances of prisoners, detenus and others. Are you going to prohibit the publication of such proceedings? Will it be under your authority to do that? Then there are matters that are not discussed in the House of Commons, because responsibility for them has been transferred to the Provincial Councils. In respect of those matters, are you going to shut out the ventilation of such grievances? Sir, I would also like to point out that apart from the unobjectionable character of my amendment even from the Government's point of view

there is another aspect which I want to place before both the Government and the House. It is this: that the present Government may be wedded to a particular policy and we in the opposition may not share their views. I shall come direct to the point. Take the case of detenus, detained without trial under the Bengal Criminal Law (Amendment) Act. I may state frankly that it is my intention to seek the suffrage of my constituency when the Council is dissolved. (Mr. NARENDRA KUMAR BASU: If ever.) Well, I hope sooner or later it must be dissolved—I want to seek the suffrage of my constituency on this distinct plank, that I shall seek the repeal of the Bengal Criminal Law Amendment Act. I shall ask for the release of the detenus. The Government of Bengal may take the view that the advocacy of such a plank is likely to encourage the terrorist movement. But, Sir, there is that view: I want to place before my constituency that, while I was in this Council during my term I have advocated the trial of prisoners who are detained without trial. I have protested against measures aiming at securing the detention of persons without trial, and I would ask the verdict of my constituency on that score. If Government object to that, what will be my position? Will it be fair on the part of the Government of Bengal to place me at a disadvantage? Sir, I would like to place before the Council a very delicate matter. We the members of the Hindu Block have practically most of us come here against the mandate of the Congress. Congress decided that there was no use entering the Council and members returned on the Congress ticket were asked to come out in a body, about 40 in number, and practically the whole of the presentatives of the Hindu community in Bengal withdraw from this Council. In the face of that position I am one of those who did not accept that mandate: I felt that I could be of some service, and I wanted to show to the country that even under this present constitution there was ample room for pressing our viewpoint and for making an effort to mould the policy of Government on popular lines. Well, Sir, with that belief, with that conviction, we, the constitutionalists, in the face of an overwhelming majority of our countrymen and even in the face of objections of our nearest and dearest ones, have come to this Council. And is this to be the end of all our efforts? Shall we not be able to place before our constituencies what we have done in this House? Sir, by advocating the cause of detenus, by trying to bring before Government their grievances, by asking Government to take a sympathetic attitude, we have tried to impress our countrymen that there is some good in coming to the Council; but to-day you turn round and say that those who advocate and show undue concern for the detenus, whom you have detained without trial, and against whom you have not the courage to produce evidence, have a secret sympathy for the terrorists. Sir, the other day one of the members went to the length of telling me that I was a leader of the terrorist gang. Sir,

when such words are used, we are filled with a feeling of despair, and I feel that perhaps I did wrong in coming to the Council in disregard of the mandate of my countrymen. Perhaps, Sir, we are inexperienced men and may have sometimes wasted the time of the Council. There are some of us who have been here for the first time; but when Government accuses us with wasting the time of the Council deliberately, we are really pained, for we do not waste time deliberately; and if we lower the tone of the debate, it is certainly not intentional but, may be, due to inexperience. Sir, I am not saying this in a tone of apology. But I want to place our viewpoint before Government and before such members in this House who tried to accuse us most unscrupulously of showing sympathy towards the detenus. Sir, I would like Government to consider this amendment from the point of view that they should do nothing that will encourage in the minds of the public the view that they are not supporters of constitutionalism. Sir, when the Bill was first introduced, I apprehended that it would be a sort of death blow to the constitution. If you do not accept such a harmless amendment, naturally that feeling will grow into a conviction that that is the real feeling.

Mr. P. BANERJI: Sir, in rising to support the motion before the House, I naturally think the Hon'ble Member will find his way to support a most innocent motion like this. You are aware that the publication of the proceedings of the Council takes away, if I am allowed to say, a huge sum of money, or rather a huge waste of money in the estimation of the Hon'ble Member. But we find that publication is made even to the very comma and semi-colon. Therefore, I do not agree with the remark of Mr. Ray that you, Sir, are here and it is up to you to expunge anything that we say. But the fact is there, that in this Council we are in a privileged position, and have not to obey the orders or act in accordance with the dictates of the Treasury Benches. What does sedition mean? It means that whoever brings or attempts to bring into hatred or whoever spreads or attempts to spread disaffection towards His Majesty's Government established by law in British India, is liable to be charged with sedition. But what are we here for? We are here for criticising and opposing the Government, where necessary. Government knows full well that this Council is supporting it and acting in accordance with the dictates of the Treasury Benches. We cannot deny that fact, but it is also a fact that there is and must always be an opposition as there is such a thing in every other civilised country. Sir, this opposition is never objected to in an independent country by its Government. But here, Sir, the opposition is given scant attention by the members of the Government. Is it permissible that a member of Government should raise a point of order without rising from his seat? We have, however, noticed several such instances, Sir. Then, Sir, as regards the publication of Council Proceedings, this is done very carefully by

the departments of the Government. It has often been mentioned that certain things were published and certain other things were not. We have seen that speeches of the Hon'ble Members of Government are given great prominence in the newspapers, but this amount of attention is never paid by them to the members of the opposition; in most cases, their names only appear in the newspapers as having spoken in opposition. It is a fact, Sir, that the Government viewpoint is invariably clearly reported. Sir, we do not grudge this on the part of the newspapers, but what we want is that it is also their duty to give the same prominence to the opposition viewpoint. That being the case, Sir, I fail to understand why Government should not accept a motion like this. It is said that the Government's intention is genuine, and that it does not like unnecessarily to harass or gag the press. If that is the object of the Government, we also want that publicity should be given to our viewpoint for educating our constituencies. If the Government wants that newspapers should only publish the Government viewpoint, then a time will soon come when Government will appoint an officer to write out the leader articles for publication in all the newspapers. Sir, things are changing very rapidly, and nobody will be surprised if a department of the Government is established to write out leader articles for newspapers. Sir, there is the Publicity Department which circulates certain books and pamphlets on behalf of Government. We have seen some of these publications which contain absolutely nothing and are a mere waste of public money. Sir, Khan Bahadur Azizul Haque must not forget the fact that in every country there are different parties which have their own press organs to voice their own opinion. Holding the position of Public Prosecutor of a district by Government patronage, he must not become so over-zealous in supporting the Government as to forget the fact that all over the world, every party tries to ventilate its own opinion and it is only right and proper for its press organ to give every preference and prominence to its party point of view. Sir, in our province there is the *Statesman* whose viewpoint is entirely different from ours, and there are also moderate and extremist newspapers, and it is only natural that every paper must publish news and articles in its own way. Therefore, Sir, I am unable to find any reason in the arguments put forward by the supporters of the Government in this matter. With these words, Sir, I support the motion.

Maulvi ABUL KASEM: Sir, I am sorry to say that when the last two interesting speeches, and, I may add, amusing incidents, were being related, the Leader of the House was not present to hear them, neither were the Treasury Benches full. Sir, I want certain information from the Treasury Benches. In the first place, I have no grievance for the publication or non-publication of the speeches of the members of this House. Unfortunately for myself and for the country,

I have been in the Legislature for nearly a quarter of a century, and I must say that so far as I am concerned, I have never found my speeches reported in the press. But that is not a grievance that I have started. I am grateful to the journalists for not doing so, but they did not refrain from publishing them out of any kindness to me, but because I am unable to hand over to the reporters a typed copy of my speech. The amendment of my friend, Mr. Shanti Shekhareswar Ray, is a very modest one, but, I think, it is unnecessary, because the Legislative Council is under the control of the President of the House, and I do not think the Treasury Benches have any right or business to interfere with it. Sir, if there is anything wrong, the President can put a stop to it, as has been pointed out by many members. But, Sir, the Government Benches cannot control the publication of the Proceedings of the Legislative Council, the authoritative Proceedings which are done by the Legislative Council Department, nor can the Government stop the import into this country of the Hansard Reports of the House of Commons nor of the Legislative Assembly. As a matter of fact, these are questions between the President of the House and the members, but the arguments put forward by my friends here seem to me rather amusing. One member has said that there is a grievance that unless these speeches are published in the newspapers, how are we to go to our constituencies and fight out our elections? Sir, in my experience of 22 years, I have never found it necessary to bring forward the newspaper reports for fighting out an election——

Mr. NARENDRA KUMAR BASU: Your personality is enough.

Maulvi ABUL KASEM: I thank you for that remark. Sir, by the rejection or acceptance of this amendment, we neither improve the clause, nor do otherwise. Of course, as regards publication of speeches in the newspapers, every newspaper must take the risk to do so, because here all members are privileged and are at liberty to say anything as they like, unless stopped by the President, but without any danger of being hauled up before a court of justice. But if a newspaper publishes it, it must take the risk of being hauled up before His Majesty's judges and pay penalty and damage as provided by law. So, it is the business of the newspapers to see whether they should publish a matter or not. If a newspaper publishes any report which is likely to gain adherents to the terrorist movement, then it must do so at its own risk, but the publication of our reports in the Official Proceedings or of the Reports of the Legislative Assembly or of the House of Commons are, I think, beyond the jurisdiction of the Local Government and cannot be stopped by them. Therefore, I think this amendment does not give any advantage to us, nor does it give any advantage to the people who want this amendment to be accepted, neither it helps the Government in any way, because so far as they

are concerned, their object is to save, if I may say so, young man from falling into the trap of the terrorists and those who organise the terrorist movement. It cannot be denied, and I think my friends, Mr. Shanti Shekhareswar Ray and Mr. P. Banerji will agree with me, that young men of immature age—and I may say of immature understanding—are duped by scheming persons to join the terrorist movement, and it is a pity that Government up till now, in spite of all the resources at their command, have failed to get the brains behind this movement, and have only played with the dupes. What I want to say is that this terrorist movement is a danger to the country. It has been a danger to the rising generation; many families have been ruined, but those who engineer these things from behind the *purdah*, they are the people who ought to be caught hold of and severely punished, and some provision should be made for that. Of course, the dupes are punished, but then it is a fact that publications in the newspapers are to a very large extent responsible for the recruitment of young men to the gang of terrorists. I have dabbled in journalism myself for a pretty long time, and with others I hold the liberty of the press as very sacred. But at the same time it should not be forgotten that the liberty of the press does not mean license. Sir, nobody can deny that the terrorist movement is a danger to country and society at large, that this movement and the cult of the anarchists are a menace to the country—they are not only a cause of disturbance to the Government, but they also stand in the way of progress and advancement of the country at large. But at the same time it should not be forgotten that the liberty of the press does not mean license and, at the same time, that it is a danger to the country and society at large. Nobody can deny that at the present moment the terrorist movement is a menace to the country and not only it is the cause of disturbance to the Government but also it stands in the way of the progress and advancement of the country at large. The other day Mr. Tamisuddin, referring to the budget, said that the expenditure of about more than half a crore of rupees for this terrorist movement was a waste of money without doing things necessary for the people or, if I may be allowed to use the rather hackneyed phrase, the nation-building departments of the Government, and it is for this that we are causing the ruin of a great many brilliant young men. But that is a different matter. The present amendment is for the publication of the Proceedings of the various Legislatures both of Westminister, Delhi and Calcutta. The question is this: I think so far as the Proceedings are concerned, they are controlled by the President, and I think it can be accepted that they are not in any way likely to help the recruitment of young men into the rank of anarchists. The other thing is that I see a little danger ahead. Of course, as has been said yesterday or to-day, the life of the present Treasury Bench is short. (A voice: "How do

you know that?") I was told that, but I do not know. At any rate, within a very short time, these benches will be occupied by one section of the House who will be in the majority and will be naturally in power. If this party then allows its use for that party's purposes, then it will be possible that the publication of this information will be prohibited. I do not mean at the present moment to say that the young men are not dupes and anything that helps the recruitment of young men should be stopped. I think the Government is quite justified in that, and I regret that it took such a long time to take this step and should have been taken long ago. (A VOICE: "Hear, hear.") What I am afraid of is that the new set of people may use this for their personal purposes to the detriment of the population and, therefore, unless I get satisfactory explanation from the Treasury Bench, I am in doubt as to which side to cast my vote.

Dr. NARESH CHANDRA SEN GUPTA: I am surprised to find what a vast amount of illusion and unreality still hovers over some of the members of this Council. In moving this amendment, things have been said of what we heard long ago of the constitutional laws and of liberties and freedom and things like that, as if those things have anything to do with this bit of paper—the Bill. It is absurd to suggest and to utter those words in connection with the absolute and utter negation of every constitutional principle and every right ever recognised in free countries. It is an illusion which surprised me. Sir, I am perfectly sure that my hon'ble friend's appeal to those members is not going to have any influence upon the members of the Government Bench. On the other hand, the very difficulties which might be caused to people in the opposition might furnish the Government Bench with some additional reason for sticking to their decision. I am not one of those who banks on the popularity of the people. (Mr. SUHRAWARDY: "Indeed!") I am sure Mr. Suhrawardy knows that. I am not one of those who hanker for newspaper publicity. I am not one of those who are thinking of going before the electorate at the next election under the White Paper. (Hear! hear!) But the suggestion of Mr. Shanti Shekhareswar Ray, that it might put some of us in difficulties if we cannot place our achievements in this Council before our electorate, would seem to supply a very good reason to Mr. Reid to be adamant in opposing this proposal. For that would help him to get rid of a nuisance. Barring that, there is no reason why this amendment should not be accepted by Government. It does not say that Government would not be able to haul up the newspapers for publishing a Report or Proceedings of this House which smacks of violation of any law of the land. That power is not going to be taken away if this proviso is accepted. This is a provision which will only

prevent the Government putting a stop to the publication of any Proceedings of this House by newspapers or anywhere else. If a newspaper publishes it, it does so at its own risk. It may have offended against some law. It takes that risk. What this proviso seeks is that Government should not stop it beforehand, if the newspaper is prepared to publish it. Well, if the Government does not really want that Proceedings of the Legislative Council, especially of a particular sort, should be reported in the newspapers, for instance, proceedings in respect of which my friend the Press Officer over there is said to be sending instructions to the newspapers from time to time, there is a very good way which I can suggest to the Government. That would move the grievances of the members who have complained here, and we think that Government would be wise if they insist that every newspaper, if it publishes proceedings at all, shall publish them *in extenso*, word for word. That would stop the publication altogether.

The Hon'ble Mr. R. N. REID: Mr. Abul Kasem has explained with a lucidity, which I would find it extremely hard to equal, the exact position with regard to this publication to which these amendments refer, namely, the publication of the Proceedings of the British Parliament, Indian Legislature and Local Legislatures in India. The two first speakers supported this amendment—and in passing I should like to say that I am glad my friend Mr. Shanti Shekhareswar Ray has explained why he took the rather unusual procedure which he did recently, and though it is, I submit, inexplicable to me why he did adopt these tactics, I am very glad he has explained matters, but I must say he took to these tactics under a complete misapprehension. However, let us go on to the amendments.

The members who supported this amendment and the first two speakers seem to have begged the whole question. They assume the Government was taking these powers in order to prohibit the publication of these Proceedings. Nothing of the sort. Government have no intention of doing that. It seems to me the tabling of these amendments almost amounts to an admission that the publication of Proceedings of the Legislature might be used, and can be used in such a way as to excite sympathy for the terrorist movement, the very thing that we are out to check. Government fully realise the privileges that members of all Legislature possess, the privilege which they possess within the walls of the House, but what they desire to check is the publication of these privileged utterances by an irresponsible press in such a manner as to poison the minds of young persons, and to incite them or to put into their heads that there is something heroic about the terrorist movement. There is nothing more than that. In fact, a very careful distinction has been drawn and will always be drawn by Government between what is said by a privileged member of the House

within the House, and the way in which these utterances are reported outside. For it is very easy by all the tricks of the journalist's trade, by leaded head lines, by juxtaposition, by omissions or additions here and there to entirely misrepresent statements made on the floor of the House made in perfectly good faith, and without the slightest intention that they should be used in a way that we can see they may be used. It seems to me, Sir, therefore, that to accept this amendment to put these words in as part of the Bill would be simply to offer an invitation to action which we are most anxious to avoid. It would mean that these reports of the Proceedings of the Legislature could be published in whatever way they like and they could not be touched at all, and that is a thing that Government are determined not to allow. The purpose of the Bill is to prevent publication of such matter as is calculated to excite sympathy with the terrorist movement, and if perfectly legitimate, perfectly innocent utterances in the Legislature are published, and they are published in such a way as to further the aims of the terrorist movement, to foment recruitment to that movement, then it is Government's duty to take power to prevent it. I beg to oppose the amendments.

Mr. Shanti Shekhareswar Ray's motion being put, a division was taken with the following result:—

AYES.

Bakah, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kishori Mohan.
Fazlullah, Maulvi Mohammad.
Hoque, Kazi Emdadul.
Maiti, Mr. R.
Rai Mahasai, Manindra Deb.
Ray, Mr. Shanti Shekhareswar.
Rout, Babu Hemanta.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
*Shah, Maulvi Abdul Hamid.

NOES.

Afzal, Nawabzada Khwaja Mohammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Armstrong, Mr. W. L.
Batsh, Maulvi Shaik Rahim.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Barman, Babu Premhari.
Barma, Rai Sahib Panchanan.
Bazir Uddin, Khan Sahib Maulvi Mohammed.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Choudhury, Maulvi Abdul Ghani.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Kégley, Mr. H. G. A.
Faroqui, the Hon'ble Nawab K. G. M. Khan Bahadur.
Fawcett, Mr. L. R.
Ferguson, Mr. R. N.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkarim, of Dildaar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Goenka, Rai Bahadur Sir Badridas.
Hoque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Kassim, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Maguire, Mr. L. T.

Martin, Mr. G. M.
Mosim, Mr. S. A.
Mitter, Mr. S. C.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Mullick, Mr. Mukunda Behary.
Nag, Reverend S. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Quasem, Maulvi Abul.
Raheem, Mr. A.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Ray, Babu Nagendra Narayan.
Ray Chowdhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. S. N.
Saadullah, Maulvi Muhammad.
Sahana, Babu Satya Kinkar.
Sarker, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. S. R.
Sulaiman, Maulvi Muhammad.
Steven, Mr. J. W. H.
Suhrawardy, Mr. H. S.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deG.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 13 and "Noes" 65, the motion was lost.

Mr. DEPUTY PRESIDENT: Unless there is any objection or inconvenience felt, I should like to take up amendments Nos. 84 to 89 together. But before I call upon the movers of the amendments to move them, I should like to draw the attention of the House to the scope of the section under consideration which restricts "the publication of the name or the designation of any witness in a trial by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, or in a trial by a Special Magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932, subject to certain permission." I shall be glad if the hon'ble members will restrict themselves to the scope of this section, and members will not be in order if they repeat the arguments which were placed before the Council yesterday in connection with the deletion of proposed section 2A.

Mr. NARENDRA KUMAR BASU: I beg to move that in clause 6, proposed section 2B be omitted.

In moving this amendment, I shall not think it will be necessary for me to refer to the exact wording of the section, because you, Sir, have just been good enough to give us the marginal notes of the section. As members of the House are aware, open trial is one of the fundamental rights of the subject, because it minimises the danger of suborned evidence, and it has been laid down often and often that all trials should be held in public and that no attempt should be made to curtail the rights of the public to watch a trial which is being held. The Home Member who does not care to know the law may probably be able to know from his absent neighbour, the latest recruit to the Government of Bengal, that it has been held by the highest court in England that the rule of the court is that all trials should be held in public. Well, Sir, one of the necessary corollaries of that is that the press has got the right to publish the names of the people on trial and the people who give evidence in the case whether for or against, so that, I take it one of the reasons which underlie this

provision is that, if there is anything glaringly untrue which is being stated, it might be possible for the people to come and tell the court that what is being stated is the reverse of truth. By this clause Government is not only trying to go behind that salutary principle, but the way in which this clause is framed, I submit, makes it impolitic, if not positively dangerous. Instead of saying that the names of witnesses or their descriptions may in certain cases be not published, that is to say, the publication may be prohibited, the clause says that the name and the designation shall, with the permission of the Commissioner or the Special Magistrate or the Local Government, be published, that is to say, it makes it incumbent upon every newspaper before publication to get the permission either of the Special Tribunal or the Special Magistrate or the Local Government. I submit that is really reversing the natural order of things. If in the interest of law and order and in the interest of personal safety of the witnesses let us say it is necessary that his name and description should not be published—even though I do not agree with the view of the Government that the publication of the name and address would connote any danger to the witness, still for argument's sake if it were true that the life or liberty or limb of a witness may be jeopardised if his name and description were published, I take it that the proper way to prevent that would be for Government to take power under this Bill to allow the tribunal presiding over the trial, whether it is a special tribunal or a Special Magistrate, to prohibit the publication, but to say that no newspaper shall publish the name or description of a witness without previous permission is, I submit, as I have already stated, taking an altogether wrong course. It really hampers the publication of the proceedings in the newspapers. As we all know, newspapers live on a rush nowadays. Things which are taking place hundreds and thousands of miles away to-day are published in the newspapers to-morrow morning. To say that in the case of each particular witness the newspaper must wait till it gets the permission of the court, I mean the authority presiding over the particular trial or of the Local Government, is making the thing impossible. Sir, it will mean this—supposing a trial is taking place, say, at Alipore or Burdwan or at Hooghly, the newspaper correspondent has got to wait and get the permission of the Special Commissioners and probably the Special Commissioners, after a whole day's hard work in the court, would not feel it incumbent upon them to pass any order on this matter then and there. They may say that this blessed thing can wait till to-morrow. Thereupon, the report of the whole trial is held up, because the Commissioners do not pass any orders then and there. Then, again, the words "or of the Local Government"—that will bring in no solance to the newspapers either, because, supposing the local authority, I mean the tribunal or the

Special Magistrate, refuses permission and then the newspaper correspondent goes to the Local Government for permission, well, it will certainly be too late not only for the report to be published in time, but probably the wheels of the Local Government move so quickly that no permission will either be accorded at all, or will be refused not earlier than six weeks at the very least. We know at what tremendous pressure the Local Government acts and it is often very difficult for them to decide a simple matter in under six months or so. Therefore, it is no protection to the newspapers to say that if the permission has not been given by the Special Commissioners or by the Magistrate, they may still get permission from the Local Government: that would also apply even with greater force to the report of a trial published at a later stage. As this clause is drafted, supposing a man wants to write a report of a trial months after the event, well, what happens then? The Special Commissioners probably will be scattered all over the province, and very often at least one of the Special Commisioners is a retired Judge, and possibly several months after, when the report is about to be published, it will be found that he has gone to a land from where there is no chance of his returning; and then what happens when you do not have the permission of the Special Commissioners? You have got to wait for the permission of the Local Government. Then after months of the trial, the Local Government will take I do not know how many months to grant permission after looking into the records of the trial. These are, Sir, patent difficulties in the way of this clause as drafted. I think, therefore, that it would be better if the clause were altogether omitted and that is why I have moved my amendment No. 84. But if the House think that they will not disoblige the Home Member—or rather they will have a provision of this description—then I offer my suggestion in amendment No. 87 where I say that the following substituted clause be put in:—

"2B. In any trial by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, or by a Special Magistrate under the Bengal Suppression of Terrorists Outrages Act, 1932, the Commissioners or the Special Magistrate, as the case may be, may prohibit the disclosure of the identity of any witness examined at such trial in any newspaper, news-sheet or leaflet."

That is to say, I have tried to follow the logical order of things, that if it is intended that the identity of a certain witness or witnesses should not be disclosed, then let a prohibitory order come before the publication can be made and at a time when the publication of the proceedings will not be hampered. If the learned officers of the Government are not satisfied with the words "newspaper, news-sheet or leaflet," then I think if they accept the amendment which they have already accepted with regard to clause 2A, that is to say, "newspaper,

news-sheet, pamphlet or leaflet or any other document," even that would be better than what it is now. I suggest, if Mr. Reid will kindly listen to me, that in amendment No. 87 in the last line instead of the words "newspaper, news-sheet or leaflet," I may be permitted with the permission of the President to make it read "newspaper, news-sheet, pamphlet or leaflet or any other document." That is to say, I want to make the prohibition something which would come before the publication, that is to say, before the end of a trial. I want to change the form thus: Instead of saying that the name or designation should not be published without the permission of the Commissioners, I want to make it that the Commissioners or the Magistrate may prohibit the publication of the name or the disclosure of the identity of any witness examined at the trial, in a newspaper, pamphlet or leaflet or any other document. I do not know if that will be acceptable to the Hon'ble Member—

The Hon'ble Mr. R. N. REID: Sir, may I ask Mr. Basu a question? I do not quite follow Mr. Basu. He says that he wants to give power to the trying court to prohibit the publication of the names of witnesses; does it extend for all time, for ever, without any time-limit? As, for instance, will it apply to a person who is going to write a book even a year after?

Mr. NARENDRA KUMAR BASU: With regard to that I may say that no time-limit is mentioned in clause 2B as it has been drafted. So the question of a time-limit does not arise, and I too have not put in any time-limit at all, in order to make it more acceptable to Government. I hope accordingly that Government will consider this matter and see that it not only meets their views, but also makes it more workable in practice. As I have already tried to show, the working of the present clause is fraught with a good deal of practical difficulty, but if there is a prohibition by the Special Commissioners or by the Special Magistrate that will be easily and smoothly worked, and in that view of the case with your leave, Sir, I would like to change the last line of my amendment No. 87 by the words "newspaper, news-sheet, pamphlet, leaflet or any other document." With regard to my amendment No. 89, I would like to move it in an alternative form, that is to say, I would take out the words "book or other document" and substitute in their place the words "newspaper, news-sheet, pamphlet or leaflet."

Mr. SHANTI SHEKHARESWAR RAY: I beg to support the amendment moved by Mr. Narendra Kumar Basu. But before I proceed further, I take this opportunity to correct a misrepresentation. I am sorry I have to disillusion the Hon'ble Mr. Reid so soon. Just

a few minutes ago he gave the House to understand that my attitude had caused him some pleasure, because I had realised that I had been wrong. (THE HON'BLE MR. R. N. REID: "I never said that.") I want to tell him most emphatically that that was not my attitude. I just placed our viewpoint before the House and I expected that the Hon'ble Mr. Reid would have the graciousness to admit his mistake and withdraw the insinuation that he made yesterday against a member of the Council.

Mr. DEPUTY PRESIDENT: That does not arise out of this.

Mr. SHANTI SHEKHARESWAR RAY: But, Sir, it was more or less in the nature of a personal explanation. I am not one of those who consider Mr. Reid an all-powerful person. Well, Sir, he may be riding the high horse for the time being, but, I feel that there will——

Mr. DEPUTY PRESIDENT: Please come back to the matter under discussion.

Mr. SHANTI SHEKHARESWAR RAY: But I feel that there is an authority who watches his action, and if I had made a protest yesterday, I hope that it will be for that authority to judge whether my protest was right or wrong. In regard to the publication of proceedings, I do not know why the Government should be so keen about this matter. The Hon'ble Member has not placed any instance before the House that any witness has been intimidated or that it has been found impossible to carry on the work of the administration and the administration of justice in this land according to the procedure now in vogue. Prosecutions under special laws have been many, and I would like the Hon'ble Member to tell the House in how many cases witnesses have been intimidated, resulting in failure of a trial or in miscarriage of justice. When we depart from the normal procedure, it is fair that there should be some justification for that. But in the absence of such justification, it would not be fair for Government to ask us to sanction an extraordinary procedure. Hundreds of criminal cases, or I may say thousands of criminal cases, come before the courts of justice in this province—cases of desperate men, cases against very dangerous persons. But in such cases this new procedure is not considered necessary.

(A this stage the Council was adjourned for 15 minutes.)

(After adjournment.)

Mr. SHANTI SHEKHARESWAR RAY: Sir, I was going to say that when the situation is not such that such extraordinary powers are necessary, why should the Government go out of their way to make any such provision? It helps to create an atmosphere of panic and it

creates an atmosphere of distrust. It should be the intention of the Government to bring about a normal atmosphere. It should be the height of folly on their part to do anything that would create the impression that things are very bad in this province. I would like to tell the House and also ask the Government to remember the policy of the Government during the Great War. During that crisis it was the policy of the Government to impress on the people that the situation was not abnormal. They wanted the people to carry on as if the conditions were normal. It is only in such atmosphere that trade can flourish and there can be prosperity in the land. Instead of that if you try to create an atmosphere that suggests that the province is passing through a crisis, things are abnormal, that the province is not a safe place to live in, you will do what is diametrically opposed to what a good Government should do. If the situation has been such that it was not possible to get witnesses to depose before the special tribunals or any Magistrates then and then only there would have been justification for a measure of this nature. But, Sir, in most, if not in all, of the cases before the special tribunals you have been able to secure convictions and in cases where you have not been able to secure convictions, you have got that other handy measure—the Bengal Criminal Law Amendment Act—and the people who have been found not guilty, who have been acquitted by the Judges of the special tribunal have been kept in detention. If this is the position then why do you bring in a measure making such a provision? What will be the feelings of the people outside the province? What will be the feelings of the people outside this country when they come to know that the administration of justice has become so much impossible that it is not possible for the names of the witnesses to be published? Sir, I would ask Government to come back to the normal frame of mind, to come back, if I may be permitted to say, to the British theory.

Mr. P. N. GUHA: Mr. President, Sir, this particular section of the Bill is the only section which deals with the newspaper press, and I as one who is in the line for the last 43 years, do not think that I would do justice either to myself or to the noble profession to which I belong if I do not make a few observations in connection with the provisions of this section. Sir, my feeling over section 6 of the Bill is that of a great distress. I deplore the fact that the Government has found it necessary to impose these restrictions on the press. I am not going to challenge the viewpoints of the Government, and I do not think I will be justified in asking them to give up the idea of imposing further restrictions on the press. The task of uprooting the menace of terrorism lies with the Government and Government alone, and they are fully justified in asking this House to give them further powers over the press if they are honestly of opinion that the press has been abusing its legitimate privileges. The Government must be allowed to have their

own way at least till we can find out an effective alternative way for them, and as I am not in a position to point out such a way, I do not think I have any moral right to stand in their way, but that, Sir, cannot remove the agony that I as a journalist am suffering. I feel that the provisions of this section will greatly offend the dignity of journalism as an institution and I feel that they will deprive the journalists of their inherent rights of publishing original news wherever and whenever they can get it. The newspapers exist to cater the public with news and any obstacle placed in their way must be viewed with great distress by all journalists. Sir, the publication of the news is the fundamental right of the journalists, and it has been handed over to the succeeding generations of the journalists from time immemorial, so I cannot help expressing my deep sense of humiliation and distress in being deprived of that right.

Mr. DEPUTY PRESIDENT: This section does not refer to the publication of news.

Mr. P. N. GUHA: It does, Sir, and so I view it with a feeling of distress. If the judiciary has got a tradition of its own, if the parliamentary institutions have got traditions of their own, the institution of journalism has certainly got a tradition of its own, and I feel that an enactment like this is a direct affront to the tradition and dignity of journalism. Being unable to take the responsibility of fighting terrorism on our own shoulders and being honestly unable to challenge the viewpoints of the Government regarding the charges brought against the press of Bengal, I do not think I have any right to oppose the section, but it would have been a matter of great relief to every journalist if the Government could avoid placing such restrictions on the press as may offend its very dignity. Sir, I am really bewildered and distressed over this particular section.

The Hon'ble Mr. R. N. REID: Sir, the last speaker has very rightly championed the cause of journalism, but this clause is not an affront to journalism; it is an attack on the way in which journalism has been abused and can be abused, and this particular part of the clause which we are discussing now is designed to deal with a particular evil which arises out of these terrorist trials and the way in which the publication of the names of witnesses may lead to the intimidation of and danger to the personal safety of witnesses. Cases have occurred in which persons who gave evidence in cases have been harassed. There have been cases where men have been done to death for giving evidence in cases and that is the justification for this particular clause 2B. For that reason Government are unable to accept the amendments 84 and 85 that clause 2B be omitted.

Then there is amendment No. 87. It at first looked as if I would be able to accept it, and if I had been able to accept it, I should have

been very glad. It is rather a question of opinion. While Mr. Basu holds that to alter the section in the words of his amendment would improve it and make it easier to work, my point of view is the opposite. I do not say that the clause which stands in the Bill is without fault, but I do think it would be easier to work and after all it is the Government who has got to work it. Then its wording as suggested in this amendment turns the whole thing round. Mr. Basu also referred to the fact that the report of the whole trial, I think that is how he put it, might be held up owing to the fact that a newspaper had not got permission to publish the names of the witnesses. I am unable to follow that argument. Surely, a paper can publish the whole evidence of a trial without actually publishing the names of the witnesses. There was a little point which Mr. Shanti Shekhareswar Ray spoke, which I think I should refer to, and that was to ask whether there is likely to be any failure of trial or miscarriage of justice. That is not the point. The point of this clause is to try and do away with the danger to witnesses of intimidation and harassment and possibly worst dangers. That is the whole point of the clause, and I think it must appeal to the good sense of the House that the Government has a duty to witnesses who come forward often under very grave difficulties to give evidence in these cases.

There is one other point which I forgot to mention. Amendment No. 89, which in its altered form we are prepared to accept, that is to substitute at the end of clause 2B for the word "book" the words "news-sheet, pamphlet or leaflets."

Mr. Narendra Kumar Basu's motion (No. 84) being put, a division was taken with the following result:—

AYES.

Bakh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kishori Mohan.
Fazlullah, Maulvi Muhammad.
Haque, Kazi Emdadul.
Ray, Mr. Shanti Shekhareswar.
Ray, Chaudhury, Mr. K. C.
Samad, Maulvi Abdus.
Shah, Maulvi Abdul Hamid.

NOES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Armstrong, Mr. W.L.
Bakh, Maulvi Shaik Rahim.
Bal, Rai Sahib Sarat Chandra.
Banerji, Rai Bahadur Keshab Chandra.
Barman, Babu Premhari.
Barma, Rai Sahib Panchanan.
Birkmyre, Mr. H.
Bose, Mr. S. M.
Bottomley, Mr. J. M.
Burn, Mr. H. N.
Chaudhuri, Khan Bahadur Maulvi Ahmuzzaman.
Chaudhuri, Khan Bahadur Maulvi Mafizur Rahman.
Cohen, Mr. B. J.
Dain, Mr. G. S.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. K. B. A.
Faroqui, the Hon'ble Nawab K. S. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. G. H.
Ghaznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Bilduar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. S. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Maguire, Mr. L. T.
Martin, Mr. G. M.
Mason, Mr. G. A.

Gupta, Mr. S. C.
Gupta, Mr. S. N.
Hussain, Khan Bahadur Muhammad Abdul.
Jogi, Reverend P. A.
Kundu, Maharajkumar Chandra, of Kasimbazar.
Nathmuddin, the Hon'ble Mr. Khwaja.
Nibbett, Mr. G. [illegible]
Qasem, Maulvi Abul.
Rahoom, Mr. A.
Rahman, Mr. A. F.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Rees, Mr. J. D.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Ray, Mr. Saral K[illegible]
Roy, Mr. S. N.
Sadeksiah, Maulvi Muhammad.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Solaiman, Maulvi Muhammad.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Sumner, Mr. C. R.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 10 and "Noes" 63, the motion was lost.

Mr. Narendra Kumar Basu's motion (No. 87) was put and lost.

Mr. Narendra Kumar Basu's motion (No. 89) was then put in the following amended form and agreed to:—

"That in clause 6, in proposed section 2B, last line, for the word 'book' the words 'news-sheet, pamphlet, leaflet' be substituted."

Mr. DEPUTY PRESIDENT: There is a misprint in the proposed section 2B (clause 6 of the Bill). There is an extra word "or" in line 12. In the proposed section the superfluous word "or" in line 12 should be omitted. I therefore propose to put it in that form.

The motion that clause 6 as amended stand part of the Bill was then put and agreed to.

Mr. DEPUTY PRESIDENT: In order to assist the House I propose to sit up to 8 o'clock to-night.

Mr. NARENDRA KUMAR BASU: With great respect to the Chair, I submit that if you are going to sit late hours to-night, at least previous notice should have been given to the members. But no notice up till now has been given to us. It will be very inconvenient to some of us, who have got other engagements, to sit after 7.

Mr. DEPUTY PRESIDENT: I will certainly bear that in mind and in future the hon'ble members will have previous notice.

Clause 7.

The motion that clause 7 stand part of the Bill was then put and agreed to.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, may I submit that if we want to sit till 8 o'clock to-night, it would, as has just been pointed out by Mr. Narendra Kumar Basu, be fair if the members got previous notice of it. We have engagements at 7-30 to-night. So it will not be fair, not so much to ourselves as to the parties whose invitations we have accepted, if we are detained here till 8 o'clock. So, after all, we cannot carry on very much after 7. If you want to-

have a longer sitting on other days, proper arrangements should be made and we certainly will not object to that.

The Hon'ble Mr. R. N. REID: May I suggest that perhaps to-night we might go on till 7-30, but the House must realise that to-morrow we might sit till very much later. I suggest that we should sit till half-past seven to-night.

Maulvi SYED MAJID BAKSH: But the engagement about which Khan Bahadur Momin has said begins at half-past seven.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Personally, I cannot object to the House sitting till half-past seven to-night, but I cannot myself stay any longer.

Maulvi ABUL KASEM: I suggest that if we can finish the Bill by sitting till half-past seven to-night, well and good, and let us continue till then, but if it is not possible to do so, we had better adjourn now. If necessary, we might sit for longer hours to-morrow.

The Hon'ble Mr. R. N. REID: But we can get through a great deal of business in half-an-hour.

Babu KISHORI MOHAN CHAUDHURI: I think it will be very inconvenient for us to sit till half-past seven.

Mr. DEPUTY PRESIDENT: I think we should continue till then.

Clause 8.

Babu KISHORI MOHAN CHAUDHURI: I beg to move that clause 8 be omitted.

The effect of this amendment is that we want that the law should not be made permanent. I believe that the Criminal Law Amendment Act was passed only for five years. Subsequently, however, it was extended and now if clause 8 be accepted, the result would be——

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order, Sir. May I make an appeal on behalf of this section of the House? Almost all the members of this group have left the Council as also the members of the other group. I, therefore, suggest that we adjourn till to-morrow.

Mr. DEPUTY PRESIDENT: As the House is so anxious that we should adjourn now, the House stands adjourned till 2-30 p.m. to-morrow.

Adjournment.

The Council was then adjourned till 2-30 p.m. on Friday, the 9th March, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Friday, the 9th March, 1934, at 2-30 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURY, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 98 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Vacancy for an Inspectress of Schools.

***103. Mr. E. T. McCLUSKIE:** (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to state whether the vacancy advertised for an Inspectress of Schools, applications for which were to have been sent in by the 15th of March, 1933, has been filled?

(*b*) If the answer to (*a*) is in the negative, will the Hon'ble Minister be pleased to state whether suitable candidates have been found in this country?

(*c*) If no suitable candidates are available in this country, will the Hon'ble Minister be pleased to state the reasons why the applicants in this country have been considered unsuitable?

Mr. H. R. WILKINSON: (*a*) The vacancy has not been permanently filled.

(*b*) and (*c*) There are candidates in this country who have the requisite minimum qualifications, but so far Government have not been able to find a lady who combines all the qualities required.

Khan Bahadur MUHAMMAD ABDUL MOMIN: How long has this post been kept in a temporary capacity?

Mr. H. R. WILKINSON: Just under a year, I think.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Is it a fact that officiating arrangement is going on since the retirement of Miss Brock?

Mr. H. R. WILKINSON: No, Sir. Since the retirement of Mrs. Woodthorpe.

Last Id-ul-Fitr holidays in Rangpur civil courts.

*104. **Maulvi NUR RAHMAN KHAN YUSUFJI:** (*a*) Will the Hon'ble Member in charge of the Judicial Department be pleased to state whether it is a fact that, in spite of the representation being made to the presiding officers that Wednesday, the 17th January, 1934, was the Id-ul-Fitr day, the courts of the Subordinate Judges and the Munsif at Rangpur Sadar were not kept closed in observance of the aforesaid holiday?

(*b*) Is the Hon'ble Member aware that, as the result of the courts being kept open on the last Id-ul-Fitr day at Rangpur Sadar, cases in which the parties happened to be Muslims were either dismissed for default or decreed *ex parte* by the Subordinate Judges and the Munsifs?

(*c*) Is the Hon'ble Member aware that the aforesaid non-closure of the courts at Rangpur on the last Id-ul-Fitr day has caused immense losses to the Muslim litigants and lawyers concerned?

(*d*) If the answers to (*a*) and (*b*) are in the affirmative, will the Hon'ble Member be pleased to state what steps do the Government propose to take—

(*i*) regarding the cases that have been dismissed for default or decreed *ex parte* to the detriment of the parties concerned; and

(*ii*) regarding prevention of recurrence of such things in future?

(*e*) If the answers to (*a*) and (*b*) are in the negative, will the Hon'ble Member be pleased to have an inquiry made into the matter at an early date and take immediate steps to redress the wrongs done to the helpless litigants and the lawyers concerned?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Sir Charu Chunder Ghose): (*a*) No such representation was received, but a sectional holiday was allowed on the 17th January to Muhammadan employees in the courts at Rangpur.

(*b*) A few cases in which Muhammadans were parties or witnesses were dismissed for default or decreed *ex parte*.

(*c*) No.

(*d*) (*i*) and (*ii*) None. This is a matter for the judicial discretion of the courts concerned as regards the cases in question and the High Court is the authority which prescribes civil court holidays under section 15 of the Civil Courts Act XII of 1887.

(*e*) Does not arise.

Maulvi ABDUL KARIM: With reference to (*c*) and (*d*), will the Hon'ble Member be pleased to state whether steps will be taken to prevent a recurrence of such cases in future?

The Hon'ble Sir CHARU CHUNDER GHOSE: No steps have been taken up to the present, but the matter will engage the early attention of the authorities.

Maulvi ABDUL KARIM: May I inquire if in future the Id holidays will be so regulated that a case like this would not arise?

The Hon'ble Sir CHARU CHUNDER GHOSE: I ask for notice. I have already indicated that the matter will engage the early attention of the authorities.

Assault on a convict in Hijli Jail.

***105. Maulvi ABDUS SAMAD:** (*a*) Has the attention of the Hon'ble Member in charge of the Political (Jails) Department been drawn to the fact that an assault was committed on an ordinary convict prisoner named Nona Mia in the Hijli Jail by the head warder and others on January last?

(*b*) Is it a fact that the said head warder and the warder in charge of the cell have since been suspended in consequence of the alleged assault?

(*c*) If the answers to (*a*) and (*b*) are in the affirmative, what steps, if any, have been taken to punish the culprits and to prevent a recurrence of such unhappy incidents in future?

MEMBER in charge of POLITICAL (JAILS) DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) Yes.

(*b*) The head warder and the warder concerned were suspended during the inquiry.

(*c*) The head warder has been degraded and the warder fined.

Janai and Begumpur unions.

***106. Dr. NARESH CHANDRA SEN GUPTA:** (*a*) With reference to the reply given to starred question No. 28 of the 13th March, 1933, showing in the statement attached thereto the number of deaths from malaria and fevers in the Chanditala police-station, will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state whether the Government are considering the desirability of creating a municipality comprising the area covered by the Janai and the Begumpur unions?

(*b*) Will the Hon'ble Minister be pleased to lay on the table a statement showing the income of the said two union boards separately for the years 1931-32 and 1932-33?

MINISTER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (*a*) No.

(*b*) A statement is laid on the table.

Statement referred to in the reply to starred question No. 106 (b).

STATEMENT SHOWING THE INCOMES OF BEGUMPORE AND JANAI UNION BOARDS IN THE HOOGHLY DISTRICT DURING 1931-32 AND 1932-33.

Name of union board.	Opening balance.	Pound receipts.	Ferry receipts.	Union rate			Rent of chaukidari chakran land.	Contributions.					Total.
				Section 37(a).	Section 37(b).	Total.		From Government.	From district board.			From other sources.	
									Section 33.	Section 45.	Total.		
1	2	3	4	4(a)	5	5(a)	6	7	7(a)	8	8(a)	9	10
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.*	Rs.
1931-32.													
Begumpore ..	113	..	..	1,726	1,472	3,198	72	589	..	449	449	575	4,906
1932-33.													
Begumpore ..	65	..	..	1,693	1,607	3,300	72	385	125	312	437	75	4,334
1931-32.													
Janai ..	321	189	..	1,861	417	2,278	391	750	..	98	98	117	4,144
1932-33.													
Janai ..	46	257	..	2,177	1,630	3,807	391	1,163	..	129	129	179	5,972

MISCELLANEOUS RECEIPTS.

Name of union board.	Fees and fines under section 34.	Penalties under section 41.	Receipts of the union bench.	Receipts of the union court.	Remuneration received for process serving.	Advance recovered.	Loan receipts.	Others.	Total.	Total income.
1	11	12	13	14	14(a)	14(b)	14(c)	15	16	17
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
1931-32.										
Begumpur ..	....	21	234	475	...	....	....	1,156	1,886	6,882
1932-33.										
Begumpur ..	....	32	158	400	11	299	400	256	1,556	5,890
1931-32.										
Janai ..	....	....	....	....	....	....	....	700	700	4,844
1932-33.										
Janai ..	....	26	....	....	47	50	....	14	137	6,100

Central banks and agricultural societies.

50. Mr. NARENDRA KUMAR BASU: Will the Hon'ble Minister in charge of the Agriculture (Co-operative) Department be pleased to state—

(*i*) the amount of the reserve funds of the central banks as well as of the agricultural societies; and

(*ii*) how these funds are invested?

MINISTER in charge of AGRICULTURE (CO-OPERATIVE) DEPARTMENT (the Hon'ble Nawab K. G. M. Faroqui, Khan Bahadur): (*i*) (*a*) Central banks—Rs. 21,82,279 on 30th June, 1933.

(*b*) Agricultural societies—Rs. 1,39,99,565 on 30th June, 1933.

(*ii*) The reserve funds are invested in accordance with rule 26 (*4*) of the Government Rules under section 43 of the Co-operative Societies Act, read with section 32 of the Act, copies of which are laid on the library table.

Mr. PRESIDENT: I am very sorry that owing to illness I was unable to be present for the last two days. I hope members will forgive my absence which was absolutely unavoidable. I hope I shall have the permission of the House to retire early to-day unless my duties impel me to stay on.

(VOICES: Certainly, Sir.)

Members must have received a circular which Secretary has issued under my instructions. I shall be very glad if the Hon'ble the Home Member and different other party leaders say what they think about it.

The Hon'ble Mr. R. N. REID: Sir, as far as this side of the House is concerned, we entirely agree that it would be helpful to the working of the House to sit longer to-day, and to adjourn much later than usual, and even to continue after dinner. To-morrow, I imagine, we shall sit as previously stated in the morning at the usual hour.

Mr. PRESIDENT: Yes; but the procedure indicated by me in the circular may not apply to Saturdays.

The Hon'ble Mr. R. N. REID: I may just add this: Taking into consideration the present position of business, I feel frankly that the ultimate cause of delay is something which I said myself and which was wholly unintentional in a way. I had no intention of levelling a general charge of wasting the time of the Council against any particular section of the House or against any particular member. What

I did say was with reference to a particular amendment, that the whole clause, except for that amendment, had been discussed and discussed very fully; and when it came to that particular amendment which contained a proposal to make the comparatively unimportant addition which was really ruled out by the previous conclusions that the House had come to, it struck me that to discuss that clause over again was rather taking up the time of the House unnecessarily. That is all I have to say and I hope it will clear my position.

Mr. NARENDRA KUMAR BASU: Sir, on behalf of members on this side, I may say that we are also willing to co-operate with you in your desire that we should sit later than the usual hour of adjournment to-day, and even after dinner, if need be. As for to-morrow, we on this side, will be glad to sit from 10-30 to 1 p.m., and again in the afternoon from 3 to 7: we shall have no difficulty in doing that.

As for the remarks made by the Hon'ble Member I may say this: It is not the desire of any member on this side of the House to obstruct the passage of this Bill for the sake of mere obstruction. In fact, I think we have made our purpose absolutely clear by tabling amendments as we have done to try and improve this Bill, not only for the interest of Government, but for the interest of the country, as we understood it, and it is furthest from our purpose to obstruct the Bill as such; but what we do feel is that this is a matter of very great importance, and we ought not in the interest of the country and in the interest of Government to allow things to pass through this Council which we feel would not be for the good of the country. You may take it from us that so far as we are concerned we shall certainly co-operate with you in any manner possible but we cannot neglect our plain duty to see that the Bill is passed, if possible, in a manner which would be acceptable to us. By saying that, I do not mean to say that we accept the principle of the Bill. We only want to feel that we have made our position clear, and that we have tried to amend the Bill as best as we could. The ultimate responsibility for the passage of the Bill rests with the House as a whole.

Babu SATISH CHANDRA RAY CHOWDHURY: On behalf of this side of the House I may say that we have no desire to obstruct the passage of the Bill and that we shall be glad to co-operate with you. I may say this that if our amendments are considered, then nobody can lay the charge against us that we have been unnecessarily obstructive. But that on the contrary we have tried to support our amendments with reason and logic. We shall be very glad to co-operate and we have no intention of obstructing the passage of the Bill.

Khan Bahadur MUHAMMAD ABDUL MOMIN: So far as we are concerned—at least most of us—we are perfectly willing to co-operate with you in conducting the business as expeditiously as you desire. We have no objection to sit after dinner, or even in the afternoon to-morrow. The only thing we want is that we may be definitely told what hours we are going to sit for, so that we may make necessary arrangements.

If you permit me, Sir, I may make a few observations on the remarks made by Mr. Basu. I wish to say this that those of us who, like me, take the business of the House very seriously, have been distressed beyond measure by the trend of the discussion and by the manner in which the proceedings of the House had been conducted for the last two or three days. I appreciate fully, and as a matter of fact I have nothing but admiration for the leader of the opposition, Mr. Basu for the manner in which he has fought his battle against the provisions of this Act. But at the same time, I want to assure him and those on his side of the House that we believe that Government have brought this measure because they think it necessary in the present situation of the country that steps should be taken to bring terrorism as far as possible under control. Those of us who support Government do so not with very great pleasure, but because we are convinced that Government are acting not from any other but the best of motives. They may be right or they may be wrong. May I appeal to my friends that when they place their views before the House they might refrain from calling divisions when they know definitely that it will lead to nowhere.

Mr. PRESIDENT: I don't think you need say that at this stage.

LEGISLATIVE BUSINESS

GOVERNMENT BILL.

The Bengal Criminal Law Amendment Bill, 1934.

Clause 8.

Mr. PRESIDENT: Kishori Babu, will you move your amendment No. 97? I hope you will also co-operate with me. (Laughter.)

Babu KISHORI MOHAN CHAUDHURI: I have no desire to be obstructive in any way.

I move that clause 8 be omitted. Sir, this Bill is now going to be a permanent measure in the Statute Book. Originally, the Bengal

Criminal Law Amendment Act was enacted for five years only and it is due to expire in 1935. You have already been armed with ample powers under this Act to deal effectively with the terrorist movement. So, the intention of Government to place this measure now under consideration permanently on the Statute Book in such a hurry is a thing which I fail to understand. I do not know what knowledge and information Khan Bahadur Azizul Haque, Mr. Miller, Mr. Thompson and others have in regard to the terrorist movement, but I am sure they have got no positive information that there is a systematic movement. We, on this side of the House, are convinced that there is no systematic movement. We believe that this terrorist movement is due to various causes and economic condition is one of the causes, communal riots in different parts of Bengal and the way in which they were tackled are no less an important cause. Valuable lives and properties were lost and in some cases even the honour of women was outraged. I refer to the happenings in Chittagong, Dacca, Midnapore, Pabna and Mymensingh. The law and order which we always hear so much and which Government are so very keen in maintaining anywhere and everywhere loses its vitality and force when dealing with communal riots and other things, but in the case of a handful of terrorists, the law and order is strictly enforced. I admit there are a few misguided young men and certainly their murderous activities must be suppressed by all means and for that you have got ample powers under the existing Acts. I make bold to say that the vast majority of the people of Bengal are law-abiding and they condemn without any reservation the terrorist cult and are of opinion that this movement must be suppressed with a firm hand. But they wonder how for a few handful of misguided young men the whole community could be penalised! Sir, if the Bill is placed on the Statute Book on a permanent basis, it will be a very bad thing for the province as a whole. Outside India it will be taken that Bengal is not at all safe to go to. To say that there is a permanent menace and that it is not safe for anybody to live in Bengal is the negation of fact. This slur you are going to bring upon the whole community of Bengal by enacting this measure permanently on the Statute Book when you know for certain that that is not the fact. Sir, the Reforms are coming in very shortly and the future Government will deal with this movement in any way that they may choose. Sir, we on this side of the House, are of opinion that illegal measures after measures are being piled on the Statute Book and no doubt they have been passed by the collective wisdom of the House. But let us see how the House is constituted. There are Government officials—there are non-official Europeans—there are title-holders, zemindars and others. As regards the non-official Europeans side they must vote with Government and the reason is quite obvious. Zemindars must equally have to follow suit for fear of losing Permanent Settlement and for various other reasons. And the rest, the title-holders and others—at any rate majority of them—are under

some particular favour or patronage of Government and this is the way how illegal laws after laws are being enacted and piled upon the Statute Book. We have already provided any amount of money suppressing the terrorist movement. The Police are ever on the increase and we do not grudge in sanctioning the expenditure provided they are efficient. But we are convinced that if the Police were efficient, the terrorist movement, communal riots and other crimes would have been brought under check. Sir, with these few words I commend my amendment to the acceptance of the Hon'ble Member.

Mr. NARENDRA KUMAR BASU: Sir, I rise to support the amendment. It is certainly admitted by all sections of the House that the provisions of the Bengal Criminal Law Amendment Act of 1925 make a considerable inroad not only on personal liberty but also upon the mode of trial and provides for detention without trial, and so forth. They are really things which are not sanctioned by any law of the land. When this law was passed—I call it law because it has become part of the law of the land—it was passed for a period of five years. I was not then in the Council; but in 1930, when it was extended for a further period of five years, I distinctly remember that the then Home Member stated that the reason why he wanted it for as long as five years more was—that was in 1930—that he expected that the new constitution would come into being within the next two years, and that it would not be proper to leave the new Government without some such powers, and that it would be rather invidious to ask the new Government to make such law at its very inception. But, Sir, like many other plans of men as well as of mice, that plan is gone agley. Sir, the new constitution is to come into being shortly, and there might have been some sort of valid reason for suggesting that this law—which is really a negation of law—should be in the Statute Book for a little time longer for allowing the new constitution to function. But if the present Government, as at present constituted, if the Local Government think that there is no chance of the new constitution working not only within the next two years or five years, but also at a distant future, and that even then the condition of the country will not improve, then there might be some justification for this clause. But I don't think the Hon'ble Member will say that. If the new constitution is coming into being sooner or later, then I submit that this Act should not certainly be made permanent though not quite agreeing, I can see the point that the Act ought to be in operation for some time after the new constitution has started working. Why make it permanent at all? If the new constitution is not coming by the end of 1935, when this Act expires you can have it extended by 3, 4 or 5 years, as you may think expedient. What is the reason for making permanent a law which is admittedly undesirable and is contrary to the traditions of British justice—at least it appeared so

to the late Home Member. I submit, Sir, that there is no necessity for making this Act a permanent blot on the Statute Book. It is a blot no doubt everybody would admit that. Its existence may be rendered necessary only because of abnormal times, but do the Government feel that times in Bengal would be abnormal for ever? Then and then only can this provision for making this Act permanent be justified. But if they think that normal times will come to Bengal and the Bengal under the new constitution may become peaceful, I submit it is absolutely unnecessary to make this Act permanent. I think the only logical way for the Home Member would be to have the Act of 1925 extended, say for a couple of years more. If not, he ought to accept the amendment which proposes to extend it for five years more. But there is absolutely no reason why this insult to the people of Bengal will be allowed to remain on the Statute Book permanently.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, may I be allowed to move my amendment No. 127 along with No. 98 which I shall move presently.

Mr. PRESIDENT: No, that will come after clause 12.

Babu HEM CHANDRA ROY CHOUDHURI: I move that for clause (8), the following be substituted, namely:—

"(8) for sub-section (4) of section 1 of the Bengal Criminal Law Amendment Act, 1925, the following shall be substituted, namely:—

'(4) It shall continue in force for five years from the date of the commencement of the Bengal Criminal Law Amendment Act, 1934.' "

Sir, I am not one of those who feel no necessity for any special measure to deal with the terrorist. I am also not so optimist as to believe that Reform will itself work miracles like a touch of magician's wand in the perverse mentality of the confirmed terrorist. But at the same time I would tell the Hon'ble Home Member that he will hopelessly fail if he builds any hope to crush terrorism by making the special measures permanent. He is apparently labouring under a delusion that the conspirators are ignorant of the vast resources at the disposal of the Government to meet any case of emergency and that they do not know that the Government may have any number of Ordinances forged in a single night. Did not the Government amply demonstrate in the past their extraordinary powers. Even the worst opponent of the terrorist will give them credit for their shrewd intellect. Is it not that on many occasions they succeeded in befooling the shrewdest of the Government officers? It is therefore rather misleading to suggest that the revolutionary conspirators are led by the

consideration that the Government will before long be deprived of their power due to the expiry of the life of the special measures. Will the Government now pause and think why those measures failed in the past to achieve the object. For reasons already given, Sir, failure was more due to the legislations being temporary and to the short-sighted policy of the Government. The Government relied more on repressive laws than on conciliation—conciliation not by way of conceding any favour to the terrorists and even to their sympathisers but by showing genuine sympathy to the aims and aspirations of the Indians and taking up in right earnest works for economic development of the province. Sir, I need not repeat here how the series of broken pledges made the youths desperate in political struggles but without any fear of contradiction I may tell you that the apathy of the Government to the immense sufferings of the people from draught, famine, pestilence and unemployment, excuse of want of fund for any work of public welfare greatly contributed to the recruitment of the youths to the terrorist camp. It is perhaps for the first time in the history of the Government of Bengal that the head of the Government made a public announcement that money will not be wanting for works of economic development of the province. The announcement has succeeded in working as a balm on the sores created by the repressive policy of the Government. It is therefore the most opportune time to win over the waverers by engaging attention, energy and resources quite adequate to give a shape to the economic development scheme. Public co-operation in driving out terrorism may then be of some use to the Government. But it is not a task to be accomplished in a day or two. I would therefore suggest that the life of these special measures be extended for five years more so that the Government may have ample opportunity to make the people feel its earnestness for the welfare of them. But these measures being made permanent will take away the soothing effect of the announcement of His Excellency and the people will be driven to despiration. I may also draw your attention, Sir, to the fact that with the introduction of the reforms the "Law and Order" of the province is proposed to be transferred to a responsible minister. His interest in the province will surely make him think seriously to find out a course of successful treatment for the disease of terrorism. Not being led by the sense of infallibility of wisdom of the Government, he may take up courage in both the hands and leave the trodden path leading to no success. These special laws being made permanent will then not only embarrass him but will also be instrumental to his whole plan being frustrated due to their misuse by the overzealous Government servants who are not proposed to be under his control in the true sense of the term.

Sir, I have finished but before I take my seat I am tempted to remind the Hon'ble Home Member in the words of a great man that "It is not by laws, far less bayonets, that nations are governed; they

may enable either a man or a nation to conquer the world, but not to rule it. Sympathy, boundless sympathy can only conquer the hearts of the people."

Babu SATISH CHANDRA RAY CHOWDHURY: I move that for clause 8, the following be substituted, namely:—

"8. For sub-section (4) of section 1 of the Bengal Criminal Law Amendment Act, 1925, the following shall be substituted, namely:—

'(4) It shall continue in force for five years from date of the expiry of the Bengal Criminal Law Amendment Act, 1925'."

Sir, it is admitted on all hands that it is an emergency legislation and the character of an emergency legislation is that it should be short-lived, and that it should not be extended beyond the period of emergency. Therefore, this Act should not have an unlimited life. It is a matter of surprise to us—those of us who were present in 1930—that Government after getting it extended for five years in 1930 should now come forward with a proposal to make it permanent. Whenever Government is faced with the problem, they think that some drastic measures are necessary regardless of the justification or otherwise of such measures. But whenever such a drastic piece of legislation is indicated, it ought not to be allowed to have more time than it is necessary. Sir, the fact of making it permanent will be this. You will be practically traducing the whole nation. You do not believe that the character of the people—of that section of the people for whom legislation is intended—will ever change or improve. You do not believe that the character of the entire people of Bengal will change. Sir, we cannot accept such a charge. The other danger is that such emergency legislation is likely to cause more irritation: it is unavoidable—because in its operation and in its working some harm will be caused on account of the conduct of the agents who carry out the intention of Government therefore this Act ought not to be extended beyond the period which is absolutely necessary and it should not be allowed to continue longer than the case requires. Sir, if you consider what is coming hereafter—I am not speaking of the present Government, but I am also speaking of the future Government, for the future Government will find its hands tied by this piece of legislation. Those who will have to run the future Government would find this weapon handy and having this power in their hands they will naturally think of exercising that power and that power alone in order to suppress terrorism. They will not think of the problem from all its sides and find out their own remedy in order to meet cases like these. That also is a danger, because when they come to exercise this unlimited power—the future Ministry will be selected from certain sections—they will create many enemies for them and they will think,

of this remedy and this remedy alone, so that there will be further irritation on one side and repression on the other, and this thing will go on like the vicious circle. It is therefore also in the interest of the smooth working of the coming reforms that the future Government should not be bound by a piece of legislation like this. They should be given a free hand to cope with this problem and show their capacity to deal with such questions in their own way and also to see that as a matter of fact they really enjoy the confidence of a large section of the people, and carry with them the will and wishes of the majority in what they propose to do in order to suppress these crimes. That also is one of the reasons why I think that this legislation should not be made permanent; whatever period its life may be fixed at, on no account should it find a permanent place in the Statute Book of the country. It also appears to me, Sir, that by making this legislation permanent Government too is not prepared to trust the future Ministers which, Sir, is an unkindest cut of all. Even the present Ministers I believe have done nothing to forfeit the confidence of the Government. The future Ministers will either be the same Ministers or the reproduction of the present Ministers. In either case Government need not be afraid that those Ministers will be entrusted with the responsibility for keeping law and order—we do not of course know whether Law and Order in Bengal will be transferred, but supposing such a calamity happens, for in certain circles the transfer of Law and Order in Bengal to Ministers is considered to be a calamity; is there any justification for holding that these Ministers who may be entrusted with the responsibility in these respects will not be able to discharge their responsibility? I submit that there is no reason, from our present experience or from any amount of future speculation, to hold that they will not be able to discharge their duty. This piece of legislation, Sir, if made permanent will indirectly go to show that the present Government is not going to trust the future Ministers or, for the matter of that, that they do not believe that the reforms will be working smoothly for the good of the people. Apart from other arguments which have already been adduced and which I do not like to repeat as we are here called upon by the Chair to see that the whole business is finished very shortly, I will only add one other argument by way of reply to the Hon'ble Member. I find that he has said somewhere in the Statement of Objects and Reasons of this Bill that the reason why this Bill is going to be made permanent is that any measure which is limited in period gives the terrorist a hope that when the life of the Act will expire they will keep their power dry for action at that time. Well, Sir, that is a consideration which might weigh with Government. But, Sir, past history does not, I submit, justify this conclusion. If we just look at the past history what do we find? We find that the 1925 Act was re-enacted in 1930. But while that Act was still in operation even, then we find a most outrageous act took place in the shape of the Chittagong armoury raid,

which in point of daring, in point of planning as well as in point of execution, was unsurpassed in this country if not in any other country of the world. When the planning of the outrage on that magnitude was going on for a long time past and was executed, I may say, Sir, the Act of 1925 was in force. So, can it be said that the Police and the Intelligence Branch had not sufficient powers to check it? And therefore this raid could take place? So, Sir, if we confine ourselves to this one instance it will appear that this argument has very little value. The terrorists do not wait for opportunities. My belief is that they do not wait for opportunities to come but they create their own opportunities, even against odds. If that be so, if the Hon'ble Member agrees with me in this view, then that part of the argument which I have very carefully considered cannot take us very far in giving our support to the measure being made permanent. For this reason the life of the Bill should be limited; the period does not matter. Let us hope that the real mischief will be prevented. For all these reasons I have moved that the life of this Bill be limited to five years from the expiry of the Act of 1925; though another five years will not matter much if Hem Babu's motion is accepted. The responsibility for continuance of the Act should be placed upon the future Government when the Hon'ble Mr. Reid will have ceased to hold office and others will hold the reins of the administration. I do not mind if my amendment or the amendment of Babu Hem Chandra Roy Choudhuri, which seeks to limit the life of this Act up to 1939, is accepted. I do not mind that; all I want that it should not be permanent.

The Hon'ble Mr. R. N. REID: The last speaker has referred to this clause of the Bill as implying a gross distrust of the future Government. Well, Sir, I am afraid I cannot follow his argument at all. He might as well say that the mere fact that the Indian Penal Code or the Immoral Traffic Act, or any other Act, is in force when the new Government comes into being it is going to trammel them in their methods of governing the country. I am afraid that argument cannot go very far. Then, Sir, he deduces certain conclusions from the fact that the Chittagong armoury raid of 1930 occurred when the Act of 1925 was in force, and from that he deduces the conclusion that permanent legislation is useless. Actually, however, what happened while the 1925 Act was in force is this. The Act when it came into force first was put into operation and measures were taken under that Act to deal with those who were attempting to subvert the State, but towards the end of the life of that Act in 1928 and up to the end of 1929, practically no preventive action was taken under this Act. I think I am right in saying that all those detained under that Act were released just before the end of 1929: this was done deliberately by Government for at that time there was a talk and not only a talk but definite proposals for new constitutional reforms were in the air and, Sir, more than in the

air—that policy was followed by Government deliberately, in the hope that public opinion in general and the opinion of those who had been previously aspiring to terrorise the constituted Government of the country would change in view of the fact that it was intended to further enlarge the scope of self-government and that this terrorist movement would come to an end. It was done deliberately but what was the answer that the terrorists give? While Government held its hand and released the man it had in custody they worked up their organisations and missed no opportunity of strengthening their position, of increasing their forces and of laying their plans and those plans had found their climax in the raid of 1930, an incident from the effects of which this province is still suffering even after four years. That is the answer to Babu Satish Chandra Ray Chowdhury's deduction from the facts of the working of the Act of 1925.

A great deal has been said this evening on the question of the new constitution and on the question of making this Act permanent. But I must confess that I find it a little difficult to see very close connection between the two, for this reason that these Acts which we hope to make permanent are directed against a particular movement. This particular movement has no close connection with the new constitution and therefore, I think, that so far from doing those who are to run the new constitution a disservice it is doing them a great service in that they will have, when they come into office, a permanent enactment in force to deal with this subversive movement, for I do not believe that there are really many men who believe, in their inmost hearts that when the new constitution comes into being terrorism will disappear. Nor do I believe that the terrorists who are directing their actions mainly against Europeans now will confine their attention to them only in the future. It is possible, I am afraid it is a possibility which may have to be faced that they will use their weapons against their political opponents, and I do think therefore that this is one very strong reason why this enactment should be made permanent. When I spoke on a previous occasion in rather general terms on this question I endeavoured to explain on the basis of past history and on the basis of usual human practice, that it was not likely that the terrorists would not take every advantage of the temporary nature of the Act in order to secure their position, and come out again. I may say, Sir, that our recent information, information which I have not the slightest reason to doubt, shows that the present generation of terrorists also are making their preparations to take exactly the same line of action as did their ancestors, they are not very ancient ancestors—of 1925, or to go a little further back, those whose activities were going on round about the years 1915 to 1919. It is perfectly clear that their attitude is this: These Acts are going to come to an end in 1935: let us have our organisations intact: do not let us indulge in overt acts because we shall have the police down upon

us and they will cause us trouble and break up our organisations, and thirdly we must collect as many recruits as possible. That is the great danger and the great proof is that constant recruitment to the ranks of terrorists is going on. There is no question about that, and it is to try and prevent that recruitment that I am laying so much stress on the preventive sections of the Bill. I do not think I need labour this point much more except to say that if this House—and they have shewn it by their utterances time after time—are really anxious to put an end to this terrorist movement, there is no better way in which they can instil despondency into the hearts of these enemies of the constitution, of law and order and of ordered Government than by making this Bill permanent. Sir, I oppose the amendment.

Babu Kishori Mohan Chaudhuri's motion was then put and lost.

Babu Hem Chandra Roy Choudhuri's motion being put a division was taken with the following result:—

AYES.

Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Babu Kishori Mohan.
Chaudhuri, Maulvi Abdul Ghani.
Chowdhury, Maulvi Nurul Absar.
Haque, Kazi Emdadul.
Hossain, Maulvi Mohammad.
Maiti, Mr. R.
Raikat, Mr. Prosanna Deb.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Roat, Babu Nessel.
Roy, Choudhuri Babu Hem Chandra.
Samad, Maulvi Abdus.

NOES.

Afzal Rawabzada Khawaja Mohammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emadeddin.
Ali, Mr. Altaf.
Ashworth, Mr. C. C.
Bai, Babu Lalit Kumar.
Bai, Rai Sahib Sarat Chandra.
Barman, Babu Promhari.
Basir Uddin, Khan Sahib Maulvi Mohammed.
Birkmyre, Mr. E.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Allimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Chowdhury, Nazi Sadi Ahmed.
Cohen, Mr. D. J.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. H. G. A.
Faroqui, the Hon'ble Nawab K. G. M. Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dilduar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Mr. P. N.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hossain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzamun Ali.
Khan, Mr. Razaur Rahman.
Law, Mr. Surendra Nath.
Maguire, Mr. L. T.
Martin, Mr. D. M.
Mason, Mr. G. A.
Miller, Mr. C. S.
Mitter, Mr. S. C.
Momin, Khan Bahadur Mohammad Abdul.
Mullick, Mr. Kahanda Behary.
Ray, Reverend D. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Qasem, Maulvi Abul.
Rahman, Mr. A. F.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. R.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarker, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Steven, Mr. J. W. R.
Thompson, Mr. W. H.
Townend, Mr. H. F. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

Ayes being 16 and Noes 60, the motion was lost.

Babu Satish Chandra Ray Chowdhury's motion was then put and lost.

The motion that clause 8 stand part of the Bill was then put and agreed to.

Clause 9.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, my amendment depends on amendment No. 99. If amendment No. 99 were accepted, there will be need for this amendment but as that amendment has been lost, this is not necessary. I would not move my motion.

The motion that clause 9 stand part of the Bill was then put and agreed to.

Clause 10.

Babu KISHORI MOHAN CHAUDHURI: I beg to move that clause 10 be omitted.

Sir, this is a piece of legislation which is very unjust that a prisoner should not get an opportunity of hearing the evidence or have time for the preparation of his defence. This will be doing great injustice to the accused, and I think that the provision that the depositions recorded against him in previous trials when he was not present should not be accepted. If he is to take his trial jointly with others in the same proceedings, whatever may be the nature of his offence he should be given a reasonable opportunity to defend himself. Without that it will be a negation of justice and without wasting more time of the Council I beg to move that this clause be omitted.

The Hon'ble Mr. R. N. REID: I think Babu Kishori Mohan Chaudhuri in moving this amendment is under a misapprehension. He talks about the accused being in a disadvantageous position and unable to defend himself, but he has ample opportunities to do so. He will see this if he turns his attention to sub-clause (3) of the new section. The original Bill laid it down, that the Commissioners shall be empowered to call witnesses which they thought fit to recall but it has now been changed by the Select Committee so that they are bound to recall at the instance of the accused persons or their pleaders any such witness for such purposes unless for reasons to be recorded in writing it is not necessary in the interests of justice. I do not think that there is anything in this clause which seriously interferes with the right of the accused to defend himself or which puts him seriously at a disadvantage. I did not catch any other decisive argument in Babu Kishori Mohan Chaudhuri's speech in support of his amendment, and I think it will suffice to say that I oppose the amendment.

The motion was then put and lost.

Babu HEM CHANDRA ROY CHOUDHURI: I want to move my motion in an amended form.

Mr. PRESIDENT: I have had no notice of it, but have you had any talk with the Hon'ble Member? Does he accept your modified amendment?

The Hon'ble Mr. R. N. REID: I am not sure, Sir, whether the typed copy was sent to you for your information. It is rather a technical point.

Mr. PRESIDENT: Well, you had better read it out for the information of the House.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that the words beginning from the word "tried" in clause 10, section 7A(*1*) (*a*), lines 9 to 11, for the words "tried at the said trial jointly with such other persons," the words "placed on his trial jointly with such other persons at the same trial" be substituted.

The Hon'ble Mr. R. N. REID: I am prepared to accept that amendment in its modified form as read out.

The motion was put and agreed to.

Kazi EMDADUL HOQUE: I beg to move that in clause 10, in proposed section 7A (1)(*a*), for the words "Local Government" wherever they occur the word "Commissioner" be substituted.

Under the existing law of the land under which offences are tried, only such persons are placed under joint trial as are actually present before the Court at the time the trial commences, but this Bill wants to place under joint trial even a person who may not be present at the time the trial commences, but may be available only when the trial is almost concluded. So it is simply taking away the right, the fundamental right, of the people for a separate trial. Certainly this interferes with the right of the persons who should be tried, or who should have been tried separately, and may I ask who is to determine whether such persons are to be tried separately or jointly? The right is sought to be given to the Local Government in whom people will have little faith. Well, the Commissioners will be sitting as Judges over the matter and during the trial they may have to elucidate many matters which might entitle them to be in a better position to decide whether a man should be tried jointly or separately. Why then that power is being taken away from the Commissioners and is sought to be given to the Local Government? There is no doubt that the Commissioners might be in a more advantageous position to decide the question than the Local Government. The Local Government will have to act on the advices of some of its advisers, especially upon the information supplied to it

by the police officers in whom the people will have very little confidence, so even if its decision be right, yet the people who will be tried will not consider it a boon if they find them placed in the unhappy position of being tried jointly with other persons. But if the question is decided by the Commissioners, at least they will feel that they will gain some consideration. Then again if the Local Government is to decide the point, not only the man who is going to be tried jointly, but the people generally will consider that the man will not get a proper share of justice, so I think that if we have the words "Local Government" wherever they occur in the clause, the word "Commissioners" should be substituted in the interests of justice.

Mr. N. C. A. EDGLEY: I am afraid, Sir, that Maulvi Emdadul Hoque is labouring under a misapprehension. If he will read section 7A (*1*) (*a*) carefully he will see that that relates to certain stages actually previous to the trial and to certain matters relating to the process in placing a person on his trial. With matters of that sort, the Commissioners, who are Judges, naturally should have no concern. That is a purely executive act which should not in any way be mixed up with judicial functions of the Commissioners. I would also like to draw the attention of this House that owing to the acceptance of the amendment in a modified form which was moved by Babu Hem Chandra Roy Choudhuri, it is perfectly clear that the Commissioners will have discretion to see whether in fact a person who has been, or whose trial has been ordered under this section, can in fact be tried jointly with the other persons. With these words I oppose the amendment.

The motion was put and lost.

Kazi EMDADUL HOQUE: I move that in clause 10, in proposed section 7A (*1*) (*c*), line 7, the words "against him or" be omitted.

Now, Sir, it appears to be absurd that a man who was not present or who at any rate is not to get the right of hearing a statement made in the course of a trial should be placed in this disadvantageous position, and that any evidence recorded in his absence should go against him. What is the ordinary law? According to the ordinary law an accused person is deemed to be innocent, but here this provision is going to do something quite contrary to that. And this is surely subversive of the general policy underlying the law in this respect. Any evidence that may be recorded when the accused was absent, should be used in his favour, because in the eyes of the law he is innocent. That must be the sure footing on which the judge must take his stand. It will be a great injustice if evidence recorded in the absence of the accused is used against him, because he is under the ordinary law liable to be tried separately. You are compelling him to a joint trial, and that itself is a disadvantage under which you are placing him and if you further

want to use the evidence of the description mentioned against him with the idea of doing justice, then it would be better if we did not provide such kind of justice which is worse than injustice.

The Hon'ble Mr. R. N. REID: I find it difficult to reply to the amendment of the hon'ble member because I find it difficult how the House can accept the clause as it will stand if those words were omitted. It would then read like this—

> "When any person whose trial has been directed under clause (*a*) is produced before the Commissioners, any evidence already recorded in the trial may be admitted as evidence in his favour."

I cannot conceive that the House will agree that that will be a reasonable clause. Secondly, there is ample safeguard for an accused being tried, as will be apparent if the hon'ble member will read sub-clause (3) of that new section 7A. He has also spoken of the injustice of persons under these circumstances being put on a joint trial, but the point is that this clause deals with absconders, persons who were not present at the original trial but subsequently surrendered or were arrested after the commencement of the trial. They will be put on their trial jointly with the others simply because they were concerned in a joint offence. I oppose the amendment.

The motion was then put and lost.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, with your permission I beg to move the following short-notice amendment:—

"That in clause 7A(*1*) (*c*), lines 1 and 2, for the words 'whose trial has been directed' the words 'in respect of whom a direction has been made' be substituted."

The motion was put and agreed to.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that in clause 10, in proposed section 7A (2) (*a*), in lines 5 and 6, the words "in the opinion of the Commissioners" be omitted.

My interpretation of this clause is that the decision of the Commissioners in directing that these persons should be tried jointly with the persons already tried becomes final if these words remain as they are in the clause. But this being a question of law, I think the High Court's jurisdiction should not be ousted. If these words are taken away, then the law will take its own course. If these persons might have been legally tried along with those persons, there will be no bar to the Commissioners trying these persons jointly with those who have already been tried. Hence I want these words to be omitted.

Mr. N. C. A. EDGLEY: With regard to this amendment I would like to point out that there is no question of ousting the jurisdiction of

the High Court here at all. This particular section assumes that a trial is actually taking place before the Commissioners. Therefore, it is the Commissioners who have to decide whether in fact the evidence which was given in a previous trial can be put in or not or whether the person in question should be tried jointly. The section seems to be perfectly clear, and I see no necessity at all for omitting the words. I, therefore, oppose the amendment.

The motion was then put and lost.

Mr. NARENDRA KUMAR BASU: I beg to move that in clause 10, after proposed section 7 (*4*), the following be inserted, namely:—

"(5) Copies of all such evidence shall be supplied to such person free of cost."

We have already seen in the report of the Select Committee that an undertaking was given that Government would frame rules for this purpose, and that was repeated by the Home Member when he presented the report of the Select Committee. But all Governments are not permanent nor are the Government officials, and it is better to have a provision in the law itself. If this is the intention of Government, what objection can there be to have a provision in the statute? I commend the motion to the acceptance of the House.

The Hon'ble Mr. R. N. REID: I have already given an undertaking that a rule would be made to that effect, but the reason why it was not put in the Act was that it was not thought appropriate to put that kind of more or less executive direction in the statute. That is the only point, and I beg, therefore, to oppose the amendment.

The motion was then put and lost.

The motion that clause 10 as amended stand part of the Bill was then put and agreed to.

Clause 11.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that clause 11 be omitted.

I want the deletion of the clause, because there is no reason why the Commissioners who will be working on fat salaries should not at least take the trouble of recording a memorandum of evidence. Even the Sessions Judges who are too much over-worked have got to prepare a memorandum. Then there is another difficulty. The law provides that after the examination of the witness his evidence is to be read over to him and admitted to be correct. That enables the court to see that everything has been properly recorded. In this case we find that it is to be dictated to the stenographer. So evidently it would not be

possible to have the thing read over to the witness then and there. No reason has been made to appear anywhere as to why these Commissioners should not take this small amount of trouble, and I do not know how it will help them except giving some leisure to the Commissioners.

The Hon'ble Mr. R. N. REID: The hon'ble member who has moved this amendment does not seem to be very much in love with it. The reason why this clause has been put in is a matter of convenience. As regards the rules referred to by the hon'ble member under which the Sessions Judges have to work, I think this probably is a procedure which might very well apply to the Sessions Judges. I do not say that the procedure suggested here is not equally applicable to other courts. However, my only point is that this clause is intended to make trials less laborious—they are very laborious—and it was put down as a matter of convenience. I do not think it need affect nor that it will affect the proper recording of evidence in any way or the interests of the accused. I oppose the amendment.

The motion was put and lost.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that in clause 11, proposed section 9A (*1*), in lines 2 and 3, after the word "dictate" the words "in open court" be inserted.

My intention of placing this motion is that the Commissioners when they dictate the evidence must be audible to all who are present in the court in order to avoid any mistake in translation of the evidence of the witness. Another thing is that if we put these words in the clause, it will be in conformity with the existing section of the Criminal Procedure Code. I think that there would be no harm in putting in these words in the clause as they are intended to make clear that the dictation should be audible to all.

Mr. NARENDRA KUMAR BASU: I beg to move that in clause 11, in proposed section 9A (*1*), line 4, for the words "stenographer, typist or clerk" the words "stenographer or typist" be substituted.

Sir, I understand that there will be no objection to this amendment, but with regard to the amendment which has just been moved may I point out to the Home Member that probably the words "in open court" were omitted by mistake.

Babu KHETTER MOHAN RAY: I beg to move that in clause 11, in proposed section 9A (*2*), in line 2, after the words "or copy thereof" the words "shall be read before the witness and the accused or his pleader and" be inserted.

I also move that in clause 11, in proposed section 9A (*2*), in lines 3 and 4, after the word "corrected" the words "any accidental slips or omissions or" be inserted.

The reasons for my moving these amendments are these. Now the Commissioners are allowed to dictate the evidence to a stenographer or typist and so they will not write out the evidence themselves. Even the Judges take down the evidence, and it is read out to the witness and after making corrections, the Judges sign it and then it is used as an evidence. But in this particular case there is no provision that such evidence will be read over to the witness or accused. It is laid down that a Commissioner may dictate the evidence of any witness in narrative form to a stenographer, typist or clerk who shall take down the same; then the evidence taken under sub-section (1) or a copy thereof shall be signed by the Commissioner who will correct any clerical mistake in it if necessary. There is no guarantee to test the accuracy of the evidence taken down by the stenographer or by the clerk. Therefore it should be read over to the witness before the court until he admits that this is the correct statement as made before the court. Then the Judge will decide if it is correct or not, and sign. This is the procedure generally followed in law courts and I think the provision should not be such that the trial should degenerate into a farce. Sometimes it may be that unintentional errors creep in recording evidence.

With regard to my amendment No. 122, I have grave doubts whether clerical errors include accidental slips or omissions. There may be clerical errors but I think that the words "any accidental slips or omissions" should be inserted after the word "corrected". With these words I move my amendments.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 11, in proposed section 9A (2), line 2, after the words "copy thereof" the words "and read over and explained to the witness and admitted by him to be correct" be inserted.

It will be simply outrageous if mistakes which transpire after the evidence has been read over to the witness are not allowed to be corrected; that will mean failure of justice and of course in this case as in others justice can be reasonably expected.

Mr. NARENDRA KUMAR BASU: May I be permitted with regard to the last two amendments to point out to the Hon'ble Member that it is probably a slip, because under section 360 of the Criminal Procedure Code provision for reading over the evidence is limited to evidence taken under sections 356 and 357? Here the provisions of sections 356 and 357 do not come in. They are really ousted by the provision of the new clause. Therefore unless this provision of reading over is reiterated in this clause as it is in section 360 this does not apply. Section 357 of the Criminal Procedure Code runs thus:

The Local Government may direct that in any district or part of a district in proceedings before any court of session or before any Magistrate the evidence of each witness shall in the cases referred to in

section 356 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother tongue unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so and shall cause the evidence to be taken down in writing from his dictation in open court.

The clause as it now stands is a substitution for section 356 of the Criminal Procedure Code; unless these words are added the provision for reading over the evidence will not apply. I do not think it was intended either by the Select Committee or by Government.

Babu KISHORI MOHAN CHAUDHURI: I beg to move that in clause 11, proposed section 9A (3) be omitted.

In proposing my amendment I mean to say that the duty of making a memorandum of the evidence tendered should not be dispensed with. There are generally three Commissioners. If the President is engaged in dictating to a stenographer evidence in the narrative form one of the other two Commissioners may make a memorandum. Under clause 2 the evidence has to be signed by the Commissioners after they have corrected any clerical errors therein. If there are any errors they cannot be checked unless a memorandum is kept. For these reasons, Sir, I move that clause 9A (3) be omitted.

Mr. N. C. A. EDGLEY: With regard to the amendment of Babu Hem Chandra Roy Choudhuri I may point out that the whole of section 9A presupposes that the evidence shall be dictated as the trial proceeds. Therefore it must necessarily be dictated either in open court, if the case is tried in open court, or in camera if the case is tried in camera under the relevant provisions of the law. It is therefore quite unnecessary in my opinion to insert the words "in open court."

With regard to amendment No. 119 Government are prepared to accept the amendment proposed by Mr. Narendra Kumar Basu.

The object of Babu Khetter Mohan Ray's amendment is apparently that the evidence shall be read over before the witnesses and the accused persons. It must, however, be remember that the procedure which we have in view under section 9A is to the effect that, as the evidence is dictated the accused person and the witnesses actually hear what is going down on the record; if they themselves do not hear, then their pleaders will hear and understand it. It must also be remembered that there are no less than three Commissioners in such cases and that fact obviates any serious risk of any mistake occurring as the evidence is being dictated.

The amendment (No. 121) of Babu Satish Chandra Ray Chowdhury is to the same effect and I think it is quite unnecessary to say anything on this point.

Babu Khetter Mohan Ray seems to be very nervous about the language of section 9A (2) in so far as it relates to clerical errors. I think everybody will agree that the Court will hold that any accidental slips or omissions are included in clerical errors and from a drafting point of view it would certainly be undesirable to insert these particular words.

Babu Kishori Mohan Chaudhuri asks that section 9A (3) may be omitted, because he thinks that it is desirable that a memorandum of evidence should be recorded simultaneously with the dictation. As a matter of fact, it is always physically impossible to write a memorandum and dictate simultaneously. (Mr. NARENDRA KUMAR BASU: But there are three Commissioners). Well, Sir, even if there are three, it is unnecessary, for the fact that there are three Commissioners is a sufficient safeguard that what is being dictated is the correct version of the evidence. I therefore beg to oppose these amendments.

Babu Hem Chandra Roy Choudhuri's motion was put and lost.

Mr. Narendra Kumar Basu's motion was put and agreed to.

Babu Ketter Mohan Ray's motion (No. 120) being put a division was taken with the following result:—

AYES.

Ahmed, Khan Bahadur Maulvi Emadaddin.
Bakah, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Khan Bahadur Maulvi Ahmuzzaman.
Chaudhuri, Babu Kishori Mohan.
Chowdhury, Maulvi Naral Abbas.
Dutt, Rai Bahadur Dr. Haridhan.
Ensafji, Maulvi Nur Rahman Khan.
Gupta, Mr. J. N.
Haque, Khan Bahadur Maulvi Azizul.
Haque, Kazi Emdadul.
Karim, Maulvi Abdul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Law, Mr. Surendra Nath.
Maiti, Mr. R.
Momin, Khan Bahadur Muhammad Abdul.
Quasem, Maulvi Abul.
Rahman, Mr. A. T.
Rahman, Maulvi Azizur.
Raikat, Mr. Prasanna Deb.
Rai Mahasai, Manindra Deb.
Ray, Babu Khetter Mohan.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Rout, Babu Hemai.
Roy, Mr Sarat Kumar.
Roy, Mr. Sarat Kumar.
Roy Chowdhuri, Babu Rom Chandra.
Samad, Maulvi Abdes.
Shah, Maulvi Abdul Hamid.
Sinha, Raja Bahadur Bhupendra Narayan, Rashiper.
Suhrawardy, Mr. H. S.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ali, Mr. Altaf.
Armstrong, Mr. W. L.
Ashworth, Mr. S. G.
Bai, Babu Lalit Kumar.
Bai, Rai Sahib Sarat Chandra.
Barman, Babu Promhari.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Hafizur Rahman.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr S. S.
Edgley, Mr. R. G. A.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. G. R.
Ghose, the Hon'ble Sir Charu C.....
Ghaznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dildaar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Mr. P. N.
Hogg, Mr. G. P.

Hussain, Nawab Musharraf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Mr. Razaur Rahman.
Maguire, Mr. L. T.
Martin, Mr. O. M.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Mullick, Mr. Mukunda Behary.
Nag, Reverend, S. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Ray, Babu Nagendra Narayan.
Ray Chowdhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Satkowri Singh.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Sommer, Mr. C. R.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, A. deC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 34 and "Noes" 51, the motion was lost.

Babu Satish Chandra Roy Chowdhury's motion was then put and lost.

Babu Khetter Mohan Roy's motion (No. 122) was then put and lost.

Babu Kishori Mohan Chaudhuri's motion was then put and lost.

The motion that clause 11 stand part of the Bill was then put and agreed to.

(The Council then adjourned for 15 minutes.)

(After adjournment.)

Mr. PRESIDENT: I understand the House is anxious to know when we would reassemble after we adjourn at 7 o'clock. I think 9-30 would suit everyone.

Maulvi ABUL QUASEM: May we offer our submissions——

Mr. PRESIDENT: Is it necessary at all? If we must reassemble, it must be at half-past nine as it would not be possible to return earlier than that. I think that is the general wish of the members present.

Clause 12.

Mr. NARENDRA KUMAR BASU: I beg to move that clause 12 be omitted.

Sir, the House is aware that this clause seeks to perpetuate the Criminal Law Amendment Act, 1930. In reply to our arguments in favour of a similar amendment with regard to Bengal Criminal Law Amendment Act, 1925, Mr. Reid was pleased to say that he refused to believe, at least he did not admit that there was any close connection between terrorism and inauguration of the new constitution and he did not believe that terrorism would cease with the new constitution nor that the terrorists would not use their weapons against their political opponents when the present Government ceases to exercise power. And as a proof of that, he said that he had got evidence which he had no

reason to doubt that the present generation of terrorists were repeating the plans of their ancestors, and that they were building upon the hope that when in 1935 the Act would come to an end, they might renew their activities with greater success. Sir, hearing Mr. Reid speak, a great doubt arises in my mind and the doubt is this: if the Government are in possession of these proofs, these informations not only about the activities of the younger generation of the terrorists, but also of their innermost thoughts, and their hopes and aspirations, one wonders at the criminal laxity which allows these actions to be done and intentions harboured with impunity———if the information in the possession of Government amounts to proof that they know not only what the younger generation of terrorists are doing but what they are thinking, why on earth ask for all these powers in a new Bill and a new Act to stop these mischievous activities of the terrorists and to stop these unnecessary and brutal murders? This passes one's comprehension. It is either that in spite of all these, the Hon'ble Member does not believe the evidence, and that they are not proof, so that the Government is so supine—I was almost going to say indecently lax—that they do not try and save the country and their officers from the dangers that surround them. Sir, I submit that if the information in the hands of Government is really of that description then there is absolutely no necessity for any of these Acts. They have got the information and the present law is good enough to get the offenders all roped in or to punish them, and I see no necessity why they should require all this paraphernalia of extraordinary procedure and all that in order to stop terrorism in the country. Well, Sir, I have just been able to lay my hands on the speech of the Hon'ble Mr. Prentice as he then was, of the 21st August, 1930, when he introduced the Bengal Criminal Law Amendment Act of 1930. He said, speaking of the Government, that they had come to this decision, namely, to introduce this Bill, with considerable hesitation. "They recognise that legislation of this kind is repugnant to the conscience of many members of this Council. They trust however that those members will be convinced by the inexorable logic of facts of the need for legislation of this kind and will come forward to support Government in its fight against terrorism by giving us the minimum powers which we are convinced are essential." And then, Sir, when the question of a time limit was being considered in Council, and it was suggested that the Act should remain in force for two years, this is what Mr. Prentice said: "In about two years time or thereabouts there may be a change in the Constitution. If the Bill expired in two or three years one of the first steps which the Government under the new constitution will have to take, if the movement still exists, will be to tackle this unpopuplar question of dealing with the terrorist movement, and in my view of the future I am afraid that Government will have to pass a Bill of this kind." Therefore, Sir, even though Mr. Prentice has unfortunately passed away and Mr. Reid is now occupying his place in this Council, I for one am at a loss to

understand what the view point of the Government is. Mr. Prentice's view was that even though he decided that there was any close connection—I will not say denial, Mr. Prentice did not say that—he at least for one accepted that after some time though not very early in the new constitution terrorism might cease. Here we have the representative of Government saying that there is no close connection between the Bill and the new constitution, and that he was doing a service to them, and that he would not hamper the new constitution by bringing in this measure. I submit, Sir, it is very difficult to realise which reason will weigh with the Government at what time. The reason of 1930 is becoming the unreason of 1934, and so far as the reasons for the extension of the Bill are concerned, I submit, Sir, that absolutely no reason has been given as to why the Act should be made permanent. As I have already submitted I for one refuse to believe that the Government are really in the confidence of the terrorists and that the younger generation of terrorists have told the myrmidons of the Home Department or the Police Department what they think about the expiry of this law. I refuse to accept that, and in refusing to accept that, I take it that the only reason given for an extension of the Act, if it is a reason at all, for making it permanent loses its sting. I submit there is no reason why this Act of 1930 should be made permanent. The sooner it is repealed the better, but if the Home Member of 1934 still thinks, as the Home Member of 1930 thought that the Act should operate for a short time after the new constitution came into being "after two years or thereabouts," say 1930, 1934 or 1936, I submit, Sir, a proposal for extending the Act for a limited time might be brought forward

Dr. NARESH CHANDRA SEN GUPTA: I wonder if the Hon'ble Mr. Reid when he asked us to support this clause, realised that he is stultifying himself, that this clause is a confession of the futility of the measure, the violent measure, if I may say so, which he has thought to introduce. We are told in one breath that this death sentence, these methods which Mr. Thompson would willingly characterise as barbarous, are only justified because they would stamp out terrorism, and it would cease to exist. If that is so, if he really believed that this is so, there is absolutely no reason why in the same breath he says that the Bill should be made permament. It may be that their anticipations with regard to the early extinction of terrorism has not been justified, it may be that they want more extension of time for the purpose of dealing with the terrorists. If they are really honest and sincere in believing that these measures will have the effect of stamping out terrorism, then and then only if they are honest and sincere in their confession that these are not measures which they as a civilised Government like, then the only thing they can do will be to keep it as a temporary measure on the statute book and give it another trial in the hope that terrorism would be extinguished by that time. But

I do not think it will be extinguished so long as this Act, this Criminal Amendment Act and the Suppression of Terrorist Outrages Act remain on the statute book terrorism will not be extinguished. It may be extinguished by other means which might involve the withdrawal of these measures. We have been asked what those other means are; it has been suggested that we have no constructive suggestions to make in that respect. Well, I do not think this is the time or place to make these suggestions, but if the Government is right that they have got hold of thousands of these terrorists whom they have detained without trial, or convicted, well they are certainly in a position to make what I might call a psychological study of the question. I do not know if any such thing has been attempted by the Government yet and by such study they might be able to discover some more efficient cure for the evil of terrorism without seeking remedies, like these desperate efforts to deal with the evil. However, that is neither here nor there. Whether there are alternatives or not, is not the question, but we know that so long as you have this Act on the statute book terrorism will not be stamped out. It is not that you must have this on the statute book permanently because terrorism is going to be permanent, but terrorism will be permanent if this law is permanent. That is my point of view. But if the Government is sincere in its own point of view, that this Bill will "stamp out" terrorism, the words which were used by the Hon'ble Mr. Prentice in introducing the original Bill if they are really sincere in their wish, well I think it is too early yet to say that they do not want temporary measures, and that they must be made permanent. One reason assigned for the permanence of this Bill by Mr. Reid is that if this Bill is made temporary it would be an encouragement to the terrorists to sit quiet just now and wait until this Bill has expired. But he has based this theory upon certain facts which I have no hesitation in challenging. Terrorism did not burst out immediately on the expiry of the old laws, and to say so, is to give a travesty of history. Terrorism broke out again owing to numerous factors which contributed to the growth of an atmosphere favourable to terrorism, and for a great deal of that the Government was responsible. As I deny the correctness of that reading of history, I do not think I need waste any time further in refuting it. I do not think that there was any reason put forward which would stand the test of criticism or justify the permanency of this Bill. Then again, we live to learn, and Mr. Reid has found already in the course of the last 3 or 4 years and Government has already found that the measures devised in the past are not sufficient; they want something more, something different, something perhaps even more drastic. It might be Sir, that in the next year the Government will think that this is absolutely worthless as a measure for suppressing terrorism and want more. In the meantime study history, contemporary history, and you will not fail to find numerous cases in which the same thing has been treated

even more violently. If this is the position, why ask for a permanence of this measure? Why not wait for the legislature to pass another measure or to continue this measure? What is the reason for this? Is it because that Government have come to feel that they will never again have a legislature which would be as willing to support every possible measure that the Government may bring as this Council has been?

The Hon'ble Mr. R. N. REID: Mr. Narendra Kumar Basu and the last speaker both expressed complete disbelief in what I stated when I said that Government had information as regards the attitude of the terrorists in particular reference to the expectation that the existing legislation would expire in 1935. Well, if they do not believe that, I cannot help it. But I do think that it is very difficult for them to take the view they have if they regard the case dispassionately and it is very difficult for anybody to disbelieve the teaching of history, not ancient history but comparatively modern history. I say again that the lessons which we learnt from what happened just before and after the expiry of the Defence of India Act and just before and after the time when the Act of 1925 was going to expire will apply to the present position. It is impossible to believe that the terrorists are not subject to the ordinary motives that ordinary human beings are subject to, that is to say, that they saw in the past and see now that unless this Act is made permanent, within a stated period of time that special legislation by which alone, I maintain very strongly, Government have been enabled to curb their activities, I do not say to stamp out terrorism and I never said that this Bill or the existing Act were ever put forward with the claim that that would stamp out terrorism—that is a very big thing to do I am sorry to say—but I do say that when people in their position see that the only enactments which have enabled Government to deal with them effectively are about to expire within a definite period, then their policy is obvious, that is to sit tight and organise their forces and recruit as hard as they could and as soon as the Act expired to get busy again just as they got busy on the 18th April. That is the justification of making the Act of 1930 permanent. I submit that nothing has been said against making this Act permanent. I beg therefore to oppose the amendment.

Mr. Narendra Kumar Basu's motion being put a division was taken with the following result:—

AYES.

Bakeh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kishori Mohan.
Haque, Kazi Emdadul.
Maiti, Mr. R.
Ray, Mr. Shanti Shekhareswar.
Ray Choudhury, Babu Satish Chandra.
Rout, Babu Nagendra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Mr. Altaf.
Armstrong, Mr. W. L.
Bai, Babu Lalit Kumar.
Bai, Rai Sahib Sarat Chandra.
Barman, Babu Promhari.
Birkmyre, Mr. H.
Bose, Mr. S. N.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Hafizur Rahman.
Cohen, Mr. D. J.
Dain, Mr. G. H.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. R. G. A.
Faroqui, the Hon'ble Nawab K. G. M. Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dildaar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Mr. P. N.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, Nawab Musharraf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khaem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Mr. Razaur Rahman.
Law, Mr. Surendra Nath.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Mullick, Mr. Muknada Behary.
Nag, Reverend B. A.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Quasem, Maulvi Abul.
Rahman, Mr. A. F.
Ray Chowdhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Ross, Mr. J. B.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Babu Jitendra Nath.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Mr. B. R.
Sulaiman, Maulvi Muhammad.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Summer, Mr. C. R.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 12 and "Noes" 63, the amendment was lost.

Mr. PRESIDENT: To save the time of the House I think I may warn the members who are to move the next amendment not to repeat the arguments that they have already advanced in connection with amendments Nos. 98 and 99.

Babu HEM CHANDRA ROY CHOUDHURI: I beg formally to move that for clause 12 the following be substituted, namely:—

"12. For sub-section (*4*) of section 1 of the Bengal Criminal Law Amendment Act, 1930, the following shall be substituted, namely:—

'(*4*) It shall continue in force for five years from the date of commencement of the Bengal Criminal Law Amendment Act, 1934'."

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that for clause 12 the following be substituted, namely:—

"12. In sub-section (*4*) of section 1 of the Bengal Criminal Law Amendment Act, 1930, for the word 'five' the word 'ten' shall be substituted."

Sir, if this Act be made permanent on the statute book, it will be a disgrace both to Government and to the people, and for that I do not think the people should be made responsible. It will be a disgrace to Government because it may show the absence of statesmanship on their part to meet the situation and to find out new remedies for the purpose except to resort to the barbarous remedy of arresting people and putting them inside the jail. I do not think that there is any necessity of making this Act a permanent one and that is why I have suggested this amendment.

The Hon'ble Mr. R. N. REID: In deference to your wish, Sir, I would only confine myself to replying to the last speaker. My answer is this, It would be a disgrace to the Council if they do not take every possible means they could for making this measure permanent to bring an end to the terrorist movement and it would be an honour to the people to aid Government in taking this measure. I beg to oppose the amendments.

The motions were then put and lost.

The question that clause 12 stand part of the Bill was then put and agreed to.

Clause 13.

Mr. P. BANERJI: I beg to move that clause 13 be omitted.

In doing so I must submit that by the introduction of this clause Government wants to transfer the guardianship to the hands of the District Magistrate.

(At this stage Mr. President vacated the Chair and Mr. Deputy President took it.)

I fail to understand, Sir, why in certain cases the guardianship should be transferred to the District Magistrate. It is well known that the District Officers do not come in direct contact with practically most of the men in the countryside and they have to depend absolutely on the reports of their subordinates including the lowest rank, namely, the *chaukidars*. I do not think this is an equitable arrangement. It is found that the whole thing depends on the overzealous police officers. Sir, this means disturbing the tranquillity and peace of the people who are harassed for nothing. It is also found that under this provision any person even under the age of 21—as was suggested by Dr. Naresh Chandra Sen Gupta—whether he is found to be implicated in the crime or not, could be persecuted in various ways only for the reason that he is under 21 years of age. The District Magistrate will pass orders

on any report which is submitted to him by the police officers, however unreasonable may be the report made against the boys. Sir, it is a well known fact that in our younger days—the days of the partition of Bengal—when there were various associations and clubs in Bengal, the duty of the then overzealous police officers was to go to the guardians of the children and urge them to keep their wards away from these clubs and associations as they would get spoiled thereby. So it will be seen that the object of the Government has all along been not to allow any students or any boys under the age 21 to mix with one another, to have any clubs and associations of their own. It is always desirable that the boys should have sporting clubs and debating clubs, to have sports and all such things and they should mix with one another.

Sir, if the Government is really keen on correcting these misguided young men and boys they can do so by other means. Let them keep watch on the boys by all means, but my point is why do you do so secretly. Let the Government keep watch on their activities openly. What difficulty is there to do so? Appoint officers—police officers and other officers—to keep watch on them and let them look after the boys instead of reporting their activities to the District Magistrate secretly. Sir, this secret report is bad. Merely on the report of a *chowkidar* or a petty police officer to pass an order on a boy is simply monstrous. The best thing would be to warn the guardians first and then to take any action the District Magistrate thinks fit. The District Magistrate should consult the guardian before taking any action, that is my point.

Sir, it is provided in the clause under discussion that the District Magistrate may, in accordance with rules to be made in this behalf under section 13 and after consultation, where practicable, with the parent or guardian of such person, by order in writing, give such directions regulating the conduct or restricting the movements of such person or prescribing the place where he shall reside within the district, or such other directions, as the District Magistrate consider necessary for the purpose of protecting such persons from the influence of members of and persons connected with any association referred to in clause (*i*) of sub-section (*1*) of section 2 and may at any time add to amend vary or rescind any order made under this section and so on. The whole object therefore of this clause is to correct the young men and prevent them from associating with the terrorist movement. If that be the case then is it not fair that instead of giving orders according to the report of these overzealous officers of the Police Department to consult the guardians? The result of this is that the people in the countryside and in the villages—in the families—will have no peace and tranquillity merely at the instance of any blessed police officer and even of a chaukidar and the lives of the young men will become miserable and along with them the whole family to which they belong: that is, Sir, the position. The intention of the Government may not really be to harass

the people, but the net result would be that these young boys will be persecuted from all time to come. Their life will be made miserable. Sir, it is often said that Government expect co-operation from the people all over the country and to have respect for the administration; but if Government disturb the peace of the people in this way what will be its effect? The effect will be that nobody will co-operate with them—nobody will have any heart for co-operation. Sir, it is known to all that many boys have been interned in various villages where the health conditions are miserable, where they suffer from various sorts of ailments and disadvantages. Then there are some who are interned in out-of-the-way and remote places where no medical or other aids could be had. It is well known that all this is the work of Government; the District Magistrate of course will pass orders at the instance of his subordinate officers and this state of things will go on.

Now, Sir, if this state of things continue, the people, whose co-operation Government ask for will have no sympathy with the Government at whose instance their peace and tranquillity are interfered with. I say that the whole object of this Bill will be frustrated and it will not have its desired effect. Then, Sir, such interference with peace and tranquillity of a family consisting of, say, 6 or 7 boys will mean that whole set of them will have to be separated merely at the instance of the report of a chaukidar and it is well known that in a joint Hindu family it is always very difficult to do so. Therefore if in this way Government tries to disturb the peace of the people, the net result will be that almost all of those in the countryside and villages who are now with the Government will go against them, and the position will be of greater difficulty. It is possible, Sir, that in spite of all the arrangements made by Government to cope with the situation and in spite of their spending of this huge sum of money to maintain law and order the net result will be that the young men in the countryside will all turn into terrorists, and this I must say will be your creation. The result will be a greater waste of public money with no result whatsoever.

Then again in another sub-clause it is suggested that even if the person in respect of whom an order under sub-section (*1*) has been made attains the age of 21 years, the operation will not cease till after another six months and the person will remain an internee and detained. Again, if the Magistrate order a certain young man to move to a particular place no provision has anywhere been made about his allowance: nothing has been suggested as to what allowance he should be given in such circumstance. No provision has been made for the prosecution of study of a student-internee who may in all likelihood be moved to a place where there is no school or college. Under these circumstances it is apparent that the intention of Government is not really to look after the boys thus interned and to direct the Magistrate to do so, but simply to disturb the peace of the people in the countryside. That being the

case I must say that it is only because that the present Government is going out they are going to give a parting kick and that is why they are trying to pass all sorts of laws and legislations the result of which is that the people will always be against them.

Mr. SHANTI SHEKHARESWAR RAY: I support the amendment moved by my friend Mr. P. Banerji. Sir, I realise that Government has brought this proposal with the best of intentions. As a matter of fact, this is the latest effort of the Government of Bengal towards tackling this problem of terrorism. They have tried Regulation III of 1918: they have tried the Bengal Criminal Law Amendment Act, 1932, but in this clause it is the intention of the Government to carry their scheme of controlling the terrorists still further. Well, hitherto they have tried to get hold of persons whom they considered to be terrorists, and I believe they have got at the present moment about 2,000 persons in their custody not only in Bengal but in different parts of India; though they are in different parts of India, they are I think, under the charge of the Government of Bengal. Well, now, not being content with this task of reforming these 2,000 persons, they are out to reform practically the whole of the Hindu population of Bengal. Sir, I do not think the Government has considered how far this scheme is practicable. It is to be noted that in this case the responsibility will not rest with the Local Government but with the District Magistrate. We have been told that the cases of persons now detained in jails are being looked into by the Hon'ble Member in charge of the Political Department. When these retsrictions were sanctioned by the Government, the Hon'ble Member in charge of the Bill at the time gave us an assurance that there was no likelihood of any injustice to be done as he would personally go into the case of every individual. In that case, it was stipulated that every case would be thoroughly gone into. The late Sir William Prentice told us that when such restrictions were imposed under that Act, every precaution was taken that there was no injustice. Information was scrutinised very thoroughly before any action was taken. But, Sir, evidently the Government of Bengal or the Member in charge of the Department has got tired of his work and he wants some relief. Instead of that botheration now, he intends to throw the responsibility on the shoulders of the poor District Magistrates. We are told that a District Magistrate is a very overworked person but still he must have some more work. I do not know how far it will be possible for a District Magistrate with all the duties he has to discharge to take up this matter seriously. The net result will be that either some of his more important work will suffer or these cases will be looked into perfunctorily and orders will be passed practically on the reports of the Police underlings. That is a situation which we have to contemplate with shudder. Sir, is it the intention of the House to hand over the rising population of Bengal into the tender mercies of the

Police in the districts and in Calcutta? Sir, I know to what great extent the administration has been handed over to the Police but we also know that there is an assurance that the actions of the Police are carefully scrutinised by no less a person than the Hon'ble the Home Member. That is a great safeguard, but in this case there is absolutely no safeguard. Tender boys of school-going age of ten or twelve will be exposed to great dangers. I think this clause is not intended against boys only but against girls also. Sir, while no one will quarrel with the Government for their good intentions in the matter, I would like to point out to the Government how hard it will be on the persons who will be affected by this measure. The District Magistrate as we find in this clause will have the authority to restrict the movements of these boys and girls and he will have the power to ask the boys and girls to reside at a place different from his or her home. He will have the power to take him or her away from the home influence. Sir, in this matter though there is a provision that the guardian will be consulted, there is a provision that the guardian will be given an opportunity to take charge of the boys and girls. It is nowhere stated that the wishes of the guardians and parents will be respected. A boy or a girl of tender age has not been interned up to this time. So far as I am aware, the attention of the Government has been confined to adults or to boys and girls of a comparatively higher age. But here there is no such restriction. Of course we know that there is a provision that the District Magistrate will be guided in accordance with the rules to be made by the Government. We have not heard from the Hon'ble Member in charge of the Bill any indication as to what form these rules are going to take. In the absence of any such indication such a provision will be looked upon with great misgivings.

I think the House realises another danger too and that is how boys and girls who are likely to be placed under restraint will accept the situation. It is always the tendency of the youth to rebel against such restrictions. The net result will be that you will drive some of these younger girls and boys into desperation. While you are perhaps going to keep them aloof from bad influences, the result will be that they will be thrown into the same influences in spite of all your efforts, on the very ground that it is sometimes the inclination of youths to go against any such restrictions. Young boys and girls have to be handled very tenderly. Any person who has got children and who has got a family will realise this. The attempt to save the rising population of Bengal from the contamination of terrorism is not to impose restriction after restriction, not to dislocate family life, not to instigate people into open acts of disaffection but to adopt a sympathetic policy—a policy of sympathy that will be appreciated by the people. What is the net result of this policy of detention under the Terrorist Act now in force? The net result is that the number of persons who are affected are on the increase. Whenever you intern one person without trial, you create a

centre of disaffection. His friends, his relations, his nearest and dearest ones make a grievance of it. That is the breeding ground for terrorism. If there are five families interested in one interned person, there are some ten thousand families now as the breeding ground of terrorism. By this measure, by extending this scheme of internment under the garb of preventive measure, it is nothing but a scheme of internment brought forward by Government. Under this harmless garb you are simply creating further breeding grounds. The result will be that every person who is served with this notice when he attains the age of 21 will have to be transferred to one of the internment camps. You cannot expect very cordial feeling from these persons who will be placed under restrictions. I hope that must be the experience of the Government. The people whom you intern without trial cannot be expected to be very fond of you, to entertain a very high opinion of you and have very friendly feelings towards you. In this case, you are going to spoil the lives of more persons of tender age. You are going to shatter the hopes of young children who have now the brightest prospects in life. That should not be done.

(The member having reached the time-limit resumed his seat.)

Dr. NARESH CHANDRA SEN GUPTA: I frankly recognise that the Select Committee has considerably softened down this clause. But the softer words have not taken away the sting in the clause. In introducing this Bill, the Hon'ble Mr. Reid suggested that the object of this clause was—at least that was how he sought to make it acceptable—to have a sort of co-operation between the District Magistrate and the public. With that object everybody has full sympathy. If it were provided by this clause that before Government takes any action as soon as it comes to the notice of the District Magistrate that a young person is being misled, such information is to be communicated to the guardian, the guardian would welcome it of course. If that was the object, as he said, we would welcome it. But if that is the real intention, the original section as well as the section, as amended, has most successfully dissembled that concern of his for our youth. There is no doubt a provision for consultation with the parents or guardians, but that is not the purpose of the section. The section seeks to give such directions regulating the conduct or restricting the movements of such person. I think all these things might be left over to the next stage after the boy has passed the stage when a guardian can take care of him. When you know that a person is associating, a young boy or a girl, with persons who are undesirable, you bring it to the notice of the guardian. So far I can understand it. If the boy is going wrong you simply ask the guardian to take care. If the guardian fails, and if the boy has passed beyond that stage, Government already have power under the present law to take

charge under section 2 of the Criminal Law Amendment Act and to pass any orders you like on the guardian. But by this section you are not really providing a thing which everybody would have welcomed, but you are providing an additional power to the Magistrate to pass orders directly on young men, young persons, who are not yet terrorists, who are not yet members of an association, which is controlled by the terrorists; who are not yet suspected terrorists, but who have only been found to be associating with persons of that description. Well, you have really extended your powers a little further. My reason for saying this is, if he was a suspect, if he was a member of an association or a person who is already a terrorist, the Government would not and could not let him be at large. He would not be allowed to continue his life as a member of an association when it is known that he is a terrorist. Therefore the person with whom the young man is supposed here to associate must be a person about whom Government has not yet made up its mind that he is a terrorist. That is to say, he is a terrorist suspect, and the young man or girl in respect of whom this order would be passed would be only guilty of consorting with such a person, a suspected terrorist; it is immaterial that the consorting may be under certain circumstances perfectly harmless. It may be that the other person with whom he is consorting is a near relative—it may be his mother! I say that this is very far from what Mr. Reid gave us to understand, very far from ensuring a co-operation between the Magistrate and the guardian in respect of looking after the boy, as I say every parent in Bengal would welcome that co-operation from the Government which would enable them to take care of their boys. But if this is meant, this section does not carry out that intention at all.

Mr. J. N. GUPTA: I honestly believe that this is a clause which if worked carefully would be very useful in preventing persons of immature age, boys and girls, from wandering into undesirable paths. I therefore oppose the amendment. I also think that this is a duty which should fall on the District Magistrate and not on the Local Government for obvious reasons, because the District Magistrate is in touch or should be in touch with the people of his district. We have no reason, we should not assume that the District Magistrate would be intentionally interfering with the liberty of the people of his district unless he thought that by doing so it would be helping the guardian himself in keeping a son or a ward in order. Sir, it is very well known that in many cases parents and guardians would welcome, as Dr. Sen Gupta has just now said, any assistance from the District Magistrate in keeping their youthful wards under control. I only hope that this clause will be worked in a sympathetic spirit, as undoubtedly it is meant to be, and in that view, I think the words "whenever practicable" might reasonably be omitted, because these

words might give the impression that arbitrary powers were being handed over to the District Magistrate, and he will in many cases not consult the guardian as in every case he should do. As a matter of fact in my opinion action on the part of the District Magistrate in such cases should only be taken at the invitation and at the request of the guardians of the young people concerned. Sir, this is the view I hold of this clause and it is based on the experience of the actual conditions prevailing in districts which I have and I therefore oppose the amendment.

Mr. NARENDRA KUMAR BASU: It will be acknowledged by all that this is one of the most important clauses of the Bill. In fact, Sir, I am of opinion that this is in one view the most important clause in the Bill, because if this clause is improperly administered, it will be the most dangerous for the peace and tranquillity of the province. Sir, as the hon'ble members must have seen in the Statement of Objects and Reasons it was stated under clause 13 that "it takes time for the Local Government to issue orders and it often happens that, the association in jail during the intervening period of the person proceeded against with confirmed terrorists necessitates the imposition of severe restraint than would have been necessary at an earlier stage. The new section is intended to give a District Magistrate power to take prompt action at an early stage to prevent a young person being drawn into the terrorist net" and in the report of the Select Committee you will find it has been stated that the real intention underlying the proposed provision is "the protection, reclamation and safeguarding of youths who are on the border line of the terrorist movement." That is to say, Sir, that for those who are terrorists the provisions of the Bengal Criminal Law Amendment Act are to be applied, but those who are on the border line are to be dealt with under this clause. But then, the difficulty as has been pointed out by previous speakers is that in spite of having the action checked and controlled by the Local Government, the whole of the thing is left, subject to rules of course, to the District Magistrate who is more or less under the influence of the reports of the police officers, and after all in these matters that means the report of the nearest Criminal Investigation Department informer or spy. Sir, we have heard it stated that before the Local Government takes any action against any person under the Bengal Criminal Law Amendment Act, they satisfy themselves that at least from three or four independent sources a man is implicated, but here what are you going to do? You are going to allow the District Magistrate virtually to exercise the powers of the Local Government in the case of an adult, in the case of both young men and young women. Sir, we have heard before this in this Council in connection with this Bill that the younger generation of terrorists are now languishing but biding their time, but here you are dealing with the still

younger generation who are likely to blossom out into terrorists in future. Well if the remedy of the Local Government to kill terrorism from this province, is to intern the adults, to intern the adolescent who are terroristically inclined, and to intern the whole of the population below 21, and if that is the only remedy that the Local Government has got for removing this evil from this province, I submit, Sir, that that is a remedy which cannot be called a remedy. It may be that by confining the whole of Bengal into a prison house you may stop terrorism, it really comes to this that the whole of the next generation will be in danger of being interned by these District Magistrates under certain rules prescribed by the Local Government. Probably the next thing we shall hear will be that the Local Government is building créches for the infants. As soon as they are born, they are to be taken away so that the contamination of terrorism may not touch them. When and where is the Local Government going to stop? I submit that this provision which touches every person, not unborn, of course, born persons from the age 0 to 21, and allows the District Magistrate to put them under restraint so that they may not be in consort with members of the associations referred to in clause (*1*) of section 2, which gives the greatest power to harass, to oppress and to terrorise the younger generation of youths when all the world over we know that the spirit of the youth is not what it was when I was young, or even when the Hon'ble Home Member was young. In these days the spirit is quite different and if such restraint were to be put upon the younger generation nowadays it will come to this, Sir, that it will be the easiest way of making these young men, who were consorting with terrorists, turn into veriest terrorists themselves.

(The Council here adjourned for 15 minutes.)

(After adjournment.)

Mr. NARENDRA KUMAR BASU: For all the reasons that I have stated I submit that the omission of the clause will be in the best interests of law and order and I support the amendment.

The Hon'ble Mr. R. N. REID: Sir, I am grateful for the expressions which in some parts of the House have been uttered that this is a genuine attempt on the part of Government to try and prevent corruption of young persons and their being drawn into the terrorist net. It is a genuine attempt. On the other hand, it is depressing to be told that all we are doing by this genuine attempt to meet a great danger is to make the thing ten times worse. Personally I do not believe that it is as bad as all that. I do believe that good can come out of this attempt, to take some sort of control over young persons before they are really drawn into the terrorist conspiracy to such an extent that it is difficult, if not impossible, for them to escape. Dr. Naresh Chandra Sen Gupta has said—well, you have got the power

already, you can do with the people anything you like. But I explained before that to apply the provisions of the Bengal Criminal Law Amendment Act, 1930, means that you have got to go through a very elaborate process. Orders have to be obtained from Government, and in the first instance the chances are that the persons against whom action is to be taken, will have to be kept in jail for some time before final orders are passed either for home internment or village domicile, or whatever the order may be, and the danger is that they will associate with others by whom they will be corrupted still further. The intention of this clause is with the co-operation of the parents and guardians, which we hope to get in all possible cases, to prevent them from going deeper into the conspiracy until indeed they may be entirely lost." Mr. Narendra Kumar Basu has said that this a very dangerous clause. Well that cuts both ways. There are dangers in it I admit. There is always danger in a clause like this, the danger which arises from a possible misuse of it. Therefore, we can only say that Government are most anxious that these powers should be used only for the purposes which the Select Committee made so clear in their report, that is, the protection and reformation and safeguarding of young persons who are on the border line of terrorism. I only hope that Mr. Basu's forebodings are incorrect, and I can only give an assurance so far as an assurance is of any value that we shall do everything that we possibly can to see that these powers are not used in such a way as to defeat their own ends. That obviously is a thing which we just as anybody else in this House are only anxious to avoid. As I said before, it is the intention to use the co-operation of the parents and guardians to the utmost possible extent, and there is this safeguard in the clause that the Local Government have powers of supervision and control, and there is also an amendment which I understand is to be moved and which I shall certainly accept that orders are to be reviewed after a year.

Dr. Naresh Chandra Sen Gupta said that he was afraid that this clause was only going to extend the net which Government in his opinion are going to cast over this province and to drag into it all and sundry. Well that is not the point. The point is to lessen, if possible, by this means the number of fish who are there to be drawn into the net.

I was very glad to get the support of Mr. J. N. Gupta to this clause, because I know how genuine is his anxiety to prevent the youths of Bengal going the wrong way, and I do hope that this clause will succeed in some measure at least in preventing boys taking the turn which will eventually lead them to those ghastly crimes of which we have seen so much during the last few years and from which we know everybody is anxious to save the youths of Bengal. I beg to oppose the amendment.

Mr. P. Banerji's motion being put a divisio following result:—

AYES.

Bakshi, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kishori Mohan.
Haque, Kazi Emdadul.
Maiti, Mr. R.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Rout, Babu Nagendra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.

NOES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Armstrong, Mr. W. L.
Ashworth, Mr. C. G.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Barman, Babu Premhari.
Barma, Rai Sahib Panchanan.
Bottomley, Mr. J. M.
Burn, Mr. H. H.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chowdhury, Haji Badi Ahmed.
Coben, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. N. G. A.
Farequi, the Hon'ble Nawab K. G. M. Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dildusr.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Mr. P. N.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Maguire, Mr. L. T.
Martin, Mr. O. M.
Mitter, Mr. S. C.
Mullick, Mr. Makunda Behary.
Nag, Reverend R. A.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Qasem, Maulvi Abul.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Rees, Mr. J. R.
Roy, the Hon'ble Sir Bijay Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. N.
Roy Chaudhuri, Babu Nem Chandra.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. R. R.
Sumner, Mr. C. R.
Townend, Mr. H. F. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 12 and "Noes" 59, the motion was lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 13 in proposed section 2A, lines 36 and 37, for the words "after consultation where practicable" the words "in consultation" be substituted.

In this clause I submit there is some evidence of intention and of some solicitude on the part of the Government to reclaim or prevent young boys from mixing with convicted offenders or terrorists and this is evident from the general tenor of this clause. But it seems to me that whatever might be the underlying intention of the words as they stand at present they are not calculated to achieve that end. It is for this reason that I have moved my amendment and if my amendment is accepted the intention of Government will not only become clear but also in co-operation with the guardians there will be very little

likelihood of any abuse. With this belief and in this faith, Sir, I move this amendment. The object of my amendment is that, whereas it is stated in the clause "after consultation where practicable," Government officials should consult guardians at the earliest possible stage if they really mean to prevent boys from mixing with youths of questionable character. That I submit can only be done by consultation with the guardians at the earliest stage and the decision after that consultation should be a joint decision of the District Magistrate and of the guardians. Of course I know that some members would like to substitude the words "Local Government" for the words District Magistrate. But that is not my view, for I know that the Local Government generally is guided by the District Magistrate's report which report however is based on the police report. Therefore I personally do not see and think that the substitution of "Local Government" would matter very much. But it would really help if the responsibility for action under this section is made to rest both on the District Magistrate and the guardians. We have, Sir, all of us something to do at least in an indirect way with trying to prevent boys from mixing up in these affairs, and many of us claim a large share in preventing our boys from mixing with undesirable young folks. Personally I may say for the edification of the Hon'ble Member that I here stand with clean hands, and as a matter of fact I have never had any anxiety on account of any boys under my care, because I have ever kept a vigilant eye upon them. It is for these reasons, Sir, that I think that in the first instance if the authorities intervene at the right moment and bring it to the notice of the guardians that so and so is about to drift into questionable ways and I want your co-operation and help, that would be very welcome and very serviceable. In fact this intention may be made more clear if this section were amended in the way I suggest. If there is one section of the Bill which would be more serviceable than any other section which Government might think would be effective it is this section. Now, Sir, this is not possible unless the guardians are made to feel jointly responsible with the District Magistrate. But what is proposed in this clause is only "after consultation where practicable." But, Sir, I beg to submit these expressions all fall wide of the mark; "after consultation" does not mean that the District Magistrate will be bound to accept the suggestions that the guardians are prepared to offer. The guardian might say—"I have got the warnings for the first time. Nobody told me before that my boy is drifting into undesirable ways. All right I know it now and would ask you to give me a chance of correcting him, and keeping him under proper control." The District Magistrate may or may not give him a chance, for that is not binding on him, because the words are "after consultation" only and then there is the word "practicable." In many cases, Sir, it may not be practicable, and it may depend upon many circumstances upon which I

need not dilate. So what I propose to do is that the decision to be come to should be a joint decision. The result will be when this is done the thing will be perfect. But this cannot be done unless the words "after consultation where practicable" are omitted and replaced by the words "in consultation." If after proper warning the guardian does not stir himself the District Magistrate in that case may report to the Local Government and action will be taken as they think proper. As a matter of fact, this section is a very useful section and is really calculated to serve the end in view and to prevent young men from being misled into evil ways at the earliest stage. That is what I want to make clear, and I think that Government can have no substantial objection to accept my amendment.

Mr. S. N. ROY: "Sir, Government fully realise the importance of consultation with parents and guardians in the way that Babu Satish Chandra Ray Chowdhury has just mentioned. In fact it is their intention to issue instructions impressing upon the District Officers the necessity of getting into touch with guardians at the earliest possible stage, but, Sir, many guardians do not take the same interest, as Mr. Ray Chowdhury has assurred us he does in his. We have experience of plenty of parents and guardians who in spite of warnings to them that their wards or children were associating with the wrong sort of people, have completely failed to place any reliance upon our warnings with the result that Government were compelled to resort to action under the Bengal Criminal Law Amendment Act. On the other hand, we have cases of guardians coming to District Magistrates and frankly telling them that they are quite unable to control their boys. Particularly is this the case in one district, of which everybody is aware, namely, the district of Chittagong, and I am sure my friend Rai Bahadur Kamini Kumar Das will bear me out in this. Sir, it is purely because of this practical difficulty that we are putting these words and I hope Mr. Ray Chowdhury will realise that it is impossible to drop those words without making the section ineffective.

The motion was put and lost.

(The House was then adjourned till 9-30 p.m. that night.)

(After adjournment.)

In the absence of the President, Mr. Deputy President took the chair.

Babu AMULYADHAN RAY: On a point of information, Sir: I sincerely thank you, Sir, for this new experience which we are having

to-night. But I ask you if there is any precedent in any Indian Legislature for this: also whether you are going to treat this as a precedent.

Mr. DEPUTY PRESIDENT: I think there is no precedent, but precedents can be created.

Clause 13.

Babu Satish Chandra Ray Chowdhury moved the amendment which stood in the name of Mr. Ananda Mohan Poddar in the following modified form:—

"That in clause 13, after sub-section (*1*) of proposed section 2A the following proviso be added, namely:—

'Provided that such order shall be reviewed by the District Magistrate within one year from the date of making the order, and shall not remain in force for more than one year unless upon such review the District Magistrate directs its continuance'."

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, with your permission, I beg to move the above motion. I feel that it does not go very far, but still it gives the District Magistrate of the guardian of the peace a chance at least to review their own orders to see whether any palpable injustice has been done, or whether the order requires modification. I hope the Hon'ble Member will accept it.

The Hon'ble Mr. R. N. REID: Sir, I am prepared to accept the amendment in the modified form, as moved by Mr. Satish Chandra Ray Chowdhury.

The motion was then put and agreed to.

Mr. NARENDRA KUMAR BASU: Sir, I beg to move that in clause 13, in proposed section 2A(*4*), line 8, for the word "report," the word "attainment" be substituted.

Sir, the clause as it stands leaves it beautifully vague as to when the District Magistrate will make his report. Supposing the District Magistrate does not choose to make a report for two years: then for six months from the date of that report, the order remains in force even though the person has attained the age of 21 years. Therefore, in order to make such a state of things impossible, and in order to ensure that the order under this section shall not remain in force for

a longer time than is necessary, I am moving this amendment: that is to say, after the person attains the age of 21 years, the order shall remain in force for six months. There can be no difficulty in this, because it is known to the District Magistrate if the person attained the age of 21 years. But under the clause as it stands, if the District Magistrate's opinion is otherwise, the order shall remain in force for an indefinite period.

The Hon'ble Mr. R. N. REID: Sir, I appreciate Mr. Basu's point of view; but there are practical difficulties in the way. The main difficulty is this: We all know that it is always difficult to ascertain exactly the age of a person. Particularly in these cases it would be very difficult to know when the person attains that age. I wish Mr. Basu had not supported his case by suggesting that as long as two years might elapse before the report is made. I do not think it is at all likely to happen. Government must trust their officers to report in good time before the person concerned is likely to attain that age. That is the real difficulty about it—the difficulty of ascertaining the exact date on which a person attains the age of 21 years. It is for that reason that the clause, as worded, seems to be more suitable. Otherwise, there would be no necessity on the part of Government to insist on it if there had not been that practical difficulty about the exact date. I must oppose this amendment.

Dr. NARESH CHANDRA SEN GUPTA: Sir, may I ask the Hon'ble Member one question? The Hon'ble Member will notice that the clause says that "in the opinion of the District Magistrate he attains the age of 21 years." It is then that he would report. When an order is passed against a man I presume————

Mr. DEPUTY PRESIDENT: You can only ask a question, Dr. Sen Gupta to elucidate any point.

Dr. NARESH CHANDRA SEN GUPTA: Yes, Sir, I am only asking a question. When an order is issued the Magistrate will presumably ascertain the age of the person. If he is above 21 years of age, this order cannot be issued. Therefore, so far as I can see, there would be no practical difficulty at all. Having regard to that, I would ask the Hon'ble Member what is the practical difficulty.

The Hon'ble Mr. R. N. REID: The difficulty is to ascertain the precise age of a person.

Mr. Narendra Kumar Basu's motion being put, a division was taken with the following result:—

AYES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Bakub, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Babu Kisheri Mohan.
Gupta, Mr. J. N.
Haque, Kazi Emdadul.
Kasem, Maulvi Abul.
Maiti, Mr. K.
Momin, Khan Bahadur Muhammad Abdul.
Quasem, Maulvi Abul.
Rahman, Maulvi Azizur.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Rout, Babu Hemal.
Roy Chowdhuri, Babu Hem Chandra.
Sen Gupta, Dr. Naresh Chandra.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Armstrong, Mr. W. L.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Barman, Babu Promhari.
Barma, Rai Sahib Panchanan.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Cohen,, Mr. D. J.
Dutt, Mr. G. S.
Edgley, Mr. R. G. A.
Faroqui, the Hon'ble Nawab K. S. M. Khan Bahadur.
Fawcett, Mr. L. R.
Ferguson, Mr. R. .
Ritchie, Mr. R. R.
Gladding, Mr. D.
Hogg, Mr. S. P.
Hossain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Mozzam Ali.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Mullick, Mr. Mukunda Behary.
Nag, Reverend B. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Ray, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. R.
Sahana, Babu Satya Kinkar. . .
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Steven, Mr. J. R.
Sumner, Mr. C. R.
Townend, Mr. H. P. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 18 and the "Noes" 47, the motion was lost.

The Hon'ble Mr. R. N. REID: I beg to move the amendment that stands in my name to this effect that in clause 13 in proposed section 2A—

(*a*) the existing *Explanation* be numbered *Explanation 1*; and

(*b*) after *Explanation 1*, the following *Explanation* be added, namely:—

"*Explanation 2.*—For the purpose of sub-section (*1*) a student of any educational institution shall be deemed to be ordinarily resident, not only within the district in which he ordinarily resides, but also within the district in which such institution is situated."

Sir, I think the object of this explanation is sufficiently obvious. There are cases where students have been educated away from their home districts. It is possible that such students might get into bad company either in their home town or in the district where they are being educated, and it is necessary, therefore, that power should be taken to use the provisions of this clause in either case. Otherwise it would be impossible that the purposes of this clause would be of no avail. I, therefore, submit this amendment to the consideration of this House, and I trust that they will accept it.

Mr. NARENDRA KUMAR BASU: Sir, I beg to oppose this amendment. We have heard so much of practical difficulties and in my submission this explanation, if added, will lead to various practical difficulties. Firstly, it leaves it very vague whether in the case of a young man who is ordinarily resident in one district, but is a student of an educational institution in another district whether in such case the District Magistrate of both the places will have jurisdiction over him—that is not made clear. Secondly, the parent clause, if I may so term it, says that the District Magistrate after consultation where practicable with the parent or guardian of such person by order in writing gives such directions, etc. If the parent or guardian is living in one district and the young person, the student in another, the second practical difficulty which really nullifies the beneficent effects of the first part of the section will be that the District Magistrate of the place where the educational institution is situated will not have the opportunity to have any consultation with the parent or guardian. These are the two patent practical difficulties in the way of the acceptance of this amendment. Therefore, I beg to oppose the amendment.

Dr. NARESH CHANDRA SEN GUPTA: Sir, in addition to the difficulties which have been referred to by Mr. Basu, I wish to add that as the section has been drafted there may be easily a conflict of jurisdiction. Let us take the case of a boy from Mymensingh who is reading in the Rajshahi College or School. The District Magistrate of Mymensigh passes an order on him to live in Mymensigh and the District Magistrate of Rajshahi passes an order upon him to live in Rajshahi or *vice versa*. What then has the poor fellow to do? Well, it may be said that we have got to trust the District Magistrate. The whole Bill is based on that and we have repeatedly heard it said that we should have trust in the competence of the District Magistrate. No doubt we have confidence in the District Magistrate, but there may be such a thing as an angry District Magistrate. Suppose a District Magistrate happens to be angry and he then passes an order. Then of course there will be difficulty because a man who is angry is not very particular about the rationality of the order that he passes.

I may illustrate by something which happened in my own life. When I was reading in the Presidency College, we had our M.A. classes in one of the rooms of the Library. It so happened that our Professor was in conference with the Principal and we were left to ourselves. We were supposed to discuss Philosophy but we discussed something else. The result was a certain amount of noise as there will be when young people are discussing things. This annoyed the Librarian who came and told us, "Why are you making noise?" We were very naturally indignant that the Librarian should have anything to do with us, and we used some hot words. The result was that the Librarian got angry, but he could not do anything and ordered his chaprassi to shut all the four doors in the room and the chaprassi did that. The Librarian then said, "I am going to the Principal." He went upstairs, but did not go to the Principal, he had not that courage but had a little conference with the clerks in the office. In the meantime, we carried on an animated conversation and then the Assistant Librarian who in his turn was annoyed came and told us, "You are making too much noise, gentlemen." "What is that to you," we said. The Assistant Librarian was angry and called for the *chaprassi* and—ordered him to open all the doors. That is the sort of thing which is likely to happen in this case. The Magistrates of both the districts may become angry and pass conflicting orders, and no provision is going to be made for correspondence between these different Magistrates having different jurisdictions. In these circumstances, we may have practical difficulties. If it was in the mind of the Government that some such provision should be made so that Magistrates of either places might have jurisdiction, the clause ought to have been drafted with greater care and a number of different provisions would have to be made in cases of conflicting jurisdictions. Without that sort of a thing, to put in this sort of an explanation at the eleventh hour is out of the question.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, the main allurement of this clause is that it gives an opportunity to the District Magistrate to consult the guardian which fact certainly got the imagination of some of us and some of us succumbed to this temptation. As a matter of fact, this might lead to a good deal of trouble to the boys, and they might be saved betimes. But if the District Magistrate of the place where the institution is situated is invested with powers, the result will be that after consultation where practicable, this "where practicable" will vanish altogether in most of the cases because most of these boys live in colleges or in institutions away from their own district, and the whole expression "after consultation where practicable" will vanish. The District Magistrate will be invested with power to intern or extern any person in place of the

Local Government, and the mischief which Mr. N. K. Basu apprehended will certainly follow. Therefore, we think that the amendment is quite unhappy and it takes away by one hand what it proposes to give by the other hand. For this reason we oppose this amendment.

Mr. A. N. GUPTA: I also attach a great deal of importance to the consultation that is provided in this clause. The Hon'ble the Home Member would be well advised to modify this hastily drafted explanation because if we permit the Magistrate of the district where the educational institution is situated, that Magistrate will not be able to consult the guardian. Therefore, the most cogent reason of this consultation will, as has been pointed out, completely disappear. I, therefore, request the Home Member to consider this point and if there is no serious objection, to withdraw his amendment.

Mr. SHANTI SHEKHARESWAR RAY: I thank the Hon'ble Member for bringing this amendment. It will help many members of the House in the controversy with the Secretary of the Legislative Council. It is always a matter of great controversy as regards the interpretation of the words "ordinarily resident" in connection with our travelling allowance bills. Here is a definition that the words "ordinarily resident" should not be interpreted as a place where one ordinarily resides but also where one ordinarily prosecutes his studies. I cannot understand how one can be ordinarily resident in two places. The student, if he reads in any educational institution, is expected to reside practically throughout the year in a particular district and he cannot be considered to be ordinarily resident in another district. His home district may be a different one but he cannot be called an ordinary resident of that district. It may be his permanent residence but it cannot be called his place of ordinary residence. If we are to accept this interpretation of the Hon'ble Member in charge of the Bill, we do not know where we are going to stop. Perhaps we shall be expected to say that two and two do not make four but eight. Apart from these inconsistencies, I would like to point out the obvious difficulty in which a particular person will be placed if this interpretation is accepted. The Hon'ble Member has stated that this clause is expected to be a preventive clause. It is in the interests of the boys and girls and also in the interests of their parents. The benevolent Government steps in not in the capacity of one who punishes for an offence but one who goes to save a person from the clutches of the terrorists. From that point of view there is a justification that the student should be asked to reside with his parents or at such a place where he may be expected to be under the influence of his guardian and to place this boy in any district in some obscure place far away from the headquarters where he cannot carry on his studies, would

not only be harmful to the boy but a great inconvenience as well to the parents, because, there is no provision in the Bill for the maintenance of the boy. But the District Magistrate may well ask the boy of about 16 years or so to reside in a particular village in a district where he is far away from his home and his relatives. Well, who is going to maintain him there? Government have made no provision for this, and it will be an extra charge on the parents or guardians. Looking at it from this point of view, instead of doing good and being a preventive measure, it will be a punitive measure, and I would ask Government to reject it.

Mr. S. N. ROY: I can well understand that lawyers like Dr. Sen Gupta and Mr. Narendra Kumar Basu would be impressed by the possibility of a conflict of jurisdiction for that is the kind of thing that constantly crops up in courts. Actually, in practice, we do not have this conflict of jurisdiction in the executive sphere. I will instance a case with which we have recently been dealing. A boy who was concerned in certain rather dangerous activities in Chittagong was arrested and it was found necessary to put him in jail in Chittagong. Being a young boy we wanted to get him away and place him under good influences if we possibly could. The father is a Government employee in Barisal, but in the boy's own interest it was felt to be undesirable to domicile him in Barisal. The District Magistrates of Chittagong and Barisal were consulted and Government are now considering the possibility of transferring the father to some other district where the boy is not likely to come under bad influences and domiciling the boy with him. Well, what would happen in a similar case under this clause is that the District Magistrate of the district where he is residing as a student will take action and would get into touch with the parents in the other district where his parents may be resident. Then if it became necessary to domicile him in the latter district the Magistrate of that district would take action. If Government action were necessary at any stage they would intervene by executive action. Such action is habitually and as a matter of normal routine taken whenever necessary in day to day administration. If on the other hand, residence is not defined in the manner proposed, what would be the result? Take a boy who is studying in a University or a College in Calcutta, away from his own district. The District Magistrate of the district where his parents reside could not take any action against him. The District Magistrate of the district where the boy is studying would know a good deal about him but could not be able to act and prevent his association with suspected persons. They boy would get deeper into the mire until his case is so bad that the Local Government have to take more drastic action against him under section 2(*I*).

The value of this clause will be greatly diminished if we were to omit the explanation.

I support the amendment.

Mr. Reid's motion being put, a division was taken with the following result:—

AYES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Armstrong, Mr. W. L.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Barma, Rai Sahib Panchanan.
Birkmyre, Mr. H.
Bose, Mr. S. M.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Cohen, Mr. D. J.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. N. G. A.
Essufji, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dilduar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Babu Profulla Kumar.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Kasem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Mullick, Mr. Mahanda Behary.
Nag, Reverend G. A.
Nandy, Maharaja Sris Chandra, of Kasimbazar
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. G. K.
Quasem, Maulvi Abul.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. R.
Ray, the Hon'ble Sir Bijay Prasad Singh.
Ray, Mr. Siteswar Singh.
Ray, Mr. Sarat Kumar.
Ray, Mr. S. N.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Rai Sahib Akshay Kumar.
Sen, Mr. B. R.
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur.
Sulaiman, Maulvi Muhammad.
Stevens, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Sumner, Mr. C. R.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H.
Williams, Mr. A. DeC.
Woodhead, the Hon'ble Mr. J. A.

NOES.

Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kipheri Mohan.
Gupta, Mr. J. N.
Haque, Kazi Emdadul.
Maiti, Mr. R.
Rahman, Maulvi Aziaur.
Ray, Mr. Santi Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Rout, Babu Nagendra.
Roy Choudhuri, Babu Ram Chandra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Saha, Maulvi Abdul Hamid.

"Ayes" being 61 and "Noes" 15, the motion was carried.

Mr. NARENDRA KUMAR BASU: On a point of order, Sir. Is it in order that an hon'ble member who speaks against a motion should be allowed to vote for it in the division lobby?

Mr. DEPUTY PRESIDENT: It does not matter so much. It depends on how he voices his opinion when I say "Aye" or "No".

The motion that clause 13 as amended stand part of the Bill was put and agreed to.

Clause 14.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that in clause 14(3) in proposed sub-section (2) of section 3, in line 6, for the word "may" the word "shall" be substituted.

My intention in moving this amendment is that the publication of a notification in the *Calcutta Gazette* or in some local newspaper shall be made compulsory and not discretional. In view of the fact that non-compliance of the order would result in the arrest of the person against whom the order is issued, I think every possible provision should be made that the person against whom this notice is issued, may know the contents of the notice. It is commonly known that in very few cases, at least in the *mufassal*, notices are actually served, and in many cases the peons file false return of good service. Hence to avoid that, I think a provision should be made so that even in case of suppression of service people may not have any difficulty in knowing the charge. The Local Government's power of supervision will not help us much, because the Local Government will use its discretion on the report of the serving peon who may submit a false report without actually serving the notice.

The Hon'ble Mr. R. N. REID: I regret to say that I find some difficulty in following the mover of this amendment in his arguments. This clause which amends sub-section (1) of section 2 of the Bengal Criminal Law (Amendment) Act is closely co-related to the amended section 6 which lays down provisions to deal with the cases of persons who do not comply with the order which has been followed up by a notification in the *Calcutta Gazette*, and I fail to see how an alteration of the word "may" to "shall" in any way assists the Local Government or the person against whom the order may be directed. It merely gives the Local Government discretion either to issue such a notification in the Gazette or not. The changing of the word from "may" to "shall" in effect does not make any change whatever. I, therefore, oppose the amendment.

Dr. NARESH CHANDRA SEN GUPTA: Sir, may I ask the Hon'ble Member a question? By this clause it is provided that the Local Government may, by a notification published in the *Calcutta Gazette*, direct a person to appear, etc., etc. But there is nothing in the clause to show that such notification should be construed to be a substantial service. How does the Home Member propose to get over that?

The Hon'ble Mr. R. N. REID: I am afraid I have not been able to follow the proposition of Dr. Sen Gupta.

Dr. NARESH CHANDRA SEN GUPTA: Under section 3 of the Bengal Criminal Law Amendment Act, 1939, after a notice is served on a person, such person shall be deemed to have had due notice thereof, but this section provides that the Local Government may, by a notification published in the *Calcutta Gazette* and in such newspapers as it thinks fit, direct the said person to appear before such officer of Government at such place and within such period as may be specified in the notification for the purpose of receiving the order. Suppose after this he does not appear, does this notification constitute a sufficient service to bring him within the operation of the penal clauses?

The Hon'ble Mr. R. N. REID: I think that is the intention of the clauses.

The motion was then put and lost.

The motion that clause 14 stand part of the Bill was then put and agreed to.

Clause 16.

Mr. DEPUTY PRESIDENT: I propose to have one discussion on amendments Nos. 142 to 151, because they relate to the same matter.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 16, in proposed section 6 (*1*), line 5, for the words "seven years" the words "two years" be substituted.

Seven years for simple disobedience of an order like that is quite unconscionable. The punishment ought to be proportionate with the gravity of the offence. Of course there may be occasional disobedience. In such cases the award of seven years' punishment will shock anybody's conscience, at least it does shock my conscience.

Mr. NARENDRA KUMAR BASU: I beg to support this amendment. It may not be known to the non-lawyer members of this House that under the Penal Code absconding to avoid service is punishable with simple imprisonment for one month or a fine or both, and if you go to another section, there again you will find that not obeying a legal order is punishable with simple imprisonment or with fine or with both. But the Council in its wisdom by means of the Bengal Criminal Law Amendment Act. VI of 1930, made this particular offence by a person in respect of whom and order has been made under sub-section (*1*) of section 2 punishable with imprisonment for a term which may extend to two years and also with fine, that is to say, the Council in 1930 increased the punishment from simple imprisonment for one month to rigorous imprisonment for two years. Now it is intended to add about not exactly four times but about three and half times to the punishment which is already drastic. I submit that if you do not make the punishment fit the crime, if you authorise a punishment which is draconian and brutal, it will really serve to exasperate the people and defeat its own purpose. I think the enhancement of the punishment from the ordinary period of one month in the Penal Code is not warranted. I therefore support the amendment.

Dr. NARESH CHANDRA SEN GUPTA: I would just remind the House by reading the provisions of section 2 with regard to the orders for the disobedience of which this drastic penalty is provided, namely, an order may be passed upon the person that he shall notify his residence and any change of residence to such authority as may be specified in the order, shall report himself to the police in such manner and at such periods as may be so specified, shall conduct himself in such manner or abstain from such acts as may be so specified, shall reside or remain in any area so specified, shall not enter, reside in, or remain in any areas so specified, and lastly, shall be committed to custody in jail. This section cannot apply to the last clause because when he is already committed to jail there is no chance of his disobeying the order. With regard to the others, the disobedience of these orders is a comparatively trivial offence committed by a person who is not a terrorist but the person who is a member of an association controlled or instigated by a member of any association whose objects or methods include the doing of any such act or any such offence. If a man is proved to be a terrorist and if in respect of these orders it is established that he is absconding, possibly there may be some reason for drastic punishment. First of all, it is not proved that the man is a terrorist nor even proved to the satisfaction of the Local Government that he is a terrorist for the purpose of this Act but only a person who is a member or is being controlled or instigated by a member of the association whose objects include these things. Therefore, such a person can be given any one

of these orders. The nature of the orders themselves shows that he is not a dangerous person. If he were a dangerous person, there is another provision of another law by which he can be more drastically dealt with. Therefore, in respect of that man to pass a sentence of seven years for this comparatively trivial offence is to say the least of it draconian, as Mr. Basu has said. Is is not suggested by the Government, at any rate nothing has yet been placed before us by Government to show that the sentence of two years' rigorous imprisonment already provided by the legislature is not sufficient and has not proved deterrent. We have not heard Mr. Reid explaining that these orders are lightly violated or that the Government cannot get hold of those persons who disobey these orders. The cases in which these orders have been disobeyed are very few, and in some of these cases in which prosecutions have been made, the prosecutions have failed. But it has not been suggested that in any case the Government have been handicapped by the fact that the punishment has been low. Having regard to that, I submit there is no justification for this drastic measure.

The Hon'ble Mr. R. N. REID: Dr. Naresh Chandra Sen Gupta may probably have better knowledge than I have that these orders are being disobeyed in trivial cases.

Dr. NARESH CHANDRA SEN GUPTA: On a point of personal explanation. I did not say that. What I said is that the disobedience of these orders is a comparatively trivial offence committed by a person who is not a terrorist but who is a member or is being controlled or instigated by a member of any association whose objects or methods include the doing of any such offence.

The Hon'ble Mr. R. N. REID: Well, I am sorry I misheard him. What I want to say is that this punishment of seven years, which is only a maximum, is frankly intended to be deterrent because we know that it is only aimed, as the whole of this legislation is aimed, at terrorist absconders, and is based on our experience of the kind of the people who abscond, and the purpose for which they abscond. There are many of them who have absconded for a considerable time, some of them I think for a matter of two or three years, in order to utilise that period either to commit crimes themselves or to instigate others to commit crimes. Sir, we are endeavouring to bring home to them the very serious view that Government take of any violation of their orders. These orders have been given because Government regard it necessary to pass these orders for the safety of the general public. That, Sir, is the real intention of this clause. I do not think therefore that the comparison which has been drawn of the punishment laid down in the

Penal Code for failure to obey an order is at all applicable to the case. Here we are dealing with a totally different set of circumstances and a totally different set of people to what the framers of the Indian Penal Code had in mind when they passed that Act 73 years ago. We are not now in the year 1869 but we are living in 1934 and we have unfortunately to face the facts which occur in 1934. I oppose the amendment.

Mr. NARENDRA KUMAR BASU: On a point of information, Sir. Will the Hon'ble Member be pleased to accept a short-notice amendment to have death penalty provided in these cases?

The motion was then put and lost.

Mr. DEPUTY PRESIDENT: I will take amendments Nos. 155-161 together and have a general discussion on them; but they will be put separately.

Mr. NARENDRA KUMAR BASU: I beg to move the three motions standing in my name, viz., that in clause 16 in proposed section 6 (2), line 4, before the word "imprisonment" the word "simple" be inserted; that in clause 16 in proposed section 6 (2), line 5, for the words "six months" the words "one month" be substituted; that in clause 16 in proposed section 6 (2), line 6, for the word "thousand" the word "hundred" be substituted, as they are really parts of the same amendment.

The House will notice that under clause 2 of this section whoever knowingly and wilfully disobeys any direction in an order made under sub-section (1) of section 2A shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both. I want to reduce the maximum punishment to simple imprisonment for one month and the fine of Rs. 1,000 to Rs. 100 or both. I know, Sir, consistency is not a political virtue and especially consistency should not be a virtue when one has got a particular axe to grind, that is, a particular measure to get through. But I may remind the hon'ble members of this House of what the Hon'ble Member said in his Statement of Objects and Reasons and Notes on Clauses when this Bill was first introduced. In his great anxiety to keep these young men who are the subjects of this legislation in section 2A, in order to keep these young men out of harm's way the Hon'ble Member said that "under the existing law all restrictive orders have to be passed by the Local Government. It takes time for the

Local Government to issue orders and it often happens that, the association in jail during the intervening period of the person proceeded against with confirmed terrorists necessitates the imposition of severer restraint than would have been necessary at an earlier stage."

The Hon'ble Member was very anxious that these young men should not go to jail for a temporary period, and the Hon'ble Member who is also Member in charge of Jails has said in his last Administration Report, that it is absolutely improper for a Magistrate to forget that to send youthful culprits to jail for short periods is to confirm them in criminal conduct. Well, Sir, having regard to that I think no punishment of imprisonment should be awarded in a case like this. But if there is such a case where nothing else can be done I submit simple imprisonment for one month should be the maximum. After all what is this section? Under section 2A the District Magistrate in order to reclaim the boy gives him certain directions. But if he disobeys them he has to be sent to jail, and the punishment may be rigorous imprisonment for six months and a fine of one thousand rupees, that is to say, the father-guardian who in consultation with the District Magistrate sends the boy out with certain directions that guardian if it is found that the boy has disobeyed the order is to be fined a thousand rupees. I submit, Sir, it is monstrous. I have not sufficient knowledge of the English language, Sir, to characterise it properly. I think, Sir, to give a sentence of this description to an youthful offender whom the Hon'ble Member is so anxious to reclaim or keep out of crimes or to fine his father a thousand rupees is, what shall I say, nothing less than barbarous, Sir

Dr. NARESH CHANDRA SEN GUPTA: Sir, there is a Bengali saying which is very familiar to all of us, namely, মার চেয়ে যে ভাল বাসে তাকে বলে ডাইন that is to say, the person who loves better than a mother is a witch. Sir, Government in clause 13 shows excessive solicitude for the young people who are likely to be drawn into the meshes of terrorist organisations. *Ex hypothesi* he has not been drawn into it but he is associating with persons under circumstances in which it is likely that he may be drawn into them and it is only for the purpose of keeping him from harm that this clause is proposed. And because the guardian-father cannot be trusted to give the necessary directions the District Magistrate gives him the necessary directions after consultation with the parents, all for the good of the child! The parent when he is consulted perhaps agrees or perhaps does not agree; it does not matter. The District Magistrate gives him directions, for the benefit of the boy. One would suppose that if the Government were really solicitous for the welfare of the boy they would not have provided this punishment for failure to obey that order which has been made

entirely in his own interest,—a punishment of six months' imprisonment, which might be rigorous, and a fine, which might extend to one thousand rupees, to be recovered from the father under the law which prevails now. And for what? For disobeying directions which may have been given in the interest of the boy with regard to his movements. Well, Sir, young people may always be trusted to disobey instructions given for their own benefit, and every father knows that this is so. As every man who has to deal with young men knows advice of this sort is just the thing which young people resent most; and being young and thoughtless they will probably be found occasionally to disobey an order and then the result is imprisonment for six months. I do not forget that six months is the maximum or that the fine of thousand rupees is also the maximum. But then, Sir, what harm has he done? Is there anything here to show that this punishment will only be inflicted if he has done something really harmful? If he is told that you must not associate with your mother, who is suspected to be associated with a terrorist organisation, nevertheless that boy goes to his mother not to receive instructions in terrorism but because she is his mother. Nevertheless he comes within the mischief of this section. I should have understood the limitation of the punishment to really serious cases, though it is very difficult to conceive what serious cases of disobedience may come under the very benevolent directions supposed to be given under the proposed section 2A. I submit, Sir, this is providing punishment without absolutely any regard to the character of the offence. As I have said, I do not forget that it is the maximum, and I do not also forget what we have been told so often that it is to act as a deterrent. Now, Sir, this deterrent theory of punishment has been considered very thoroughly by jurists and penologists, and it is only within very narrow limits that a deterrent punishment can be usefully inflicted, because the effect of too much deterrent punishment is often to bring the law into disrespect, and to promote a general disobedience and connivance of the people in the disobedience of the law, which leads to serious punishment. If a boy has violated an order perhaps his guardian would like to conceal it for fear of this fine of a thousand rupees or for an imprisonment for six months. Something less drastic could easily be imagined which the father of the boy himself would have assisted in inflicting on the boy. But with this penalty you won't have the assistance of the father to carry out your benevolent object as in section 2A. You must remember that. You cannot have a deterrent sentence for each kind of offence. It seems to me at this rate that you might have simply the death penalty for every offence. Why don't you provide a death penalty for every offence? Because that would defeat the whole purpose of the law. You cannot inflict a death penalty and as you do not inflict a death penalty, your law also comes to disuse and loses its force. There are numerous considerations for which punishments have to be adjusted more or less

to the nature of the offence. No attempt has been made to adjust the punishment to the nature of the offence, the offence being something against an order which is, *ex hypothesi*, for the benefit of the young man. I submit there was no occasion for this punishment.

The Hon'ble Mr. R N. REID: Dr. Naresh Chandra Sen Gupta had laid great stress on the trivial nature of the offence which is contemplated in this clause and also made much of his point that the order which is being *ex hypothesi* is an order for the benefit of the person who disobeys it. If so, surely it is not at all a trivial matter that he disobeyed it. The whole point is that the order is made in order to try and prevent a youthful person getting into evil ways and associating with evil persons. If that is not a serious matter I do not know what is. At the same time, the punishment, as the Doctor was good enough to emphasise, is a maximum—a maximum of six months and a maximum of Rs. 1,000. I claim that that punishment, considering the fact that it is the maximum, is not inappropriate to the cases we are considering. I have no reason to believe that in every case the maximum penalty is going to be inflicted, and at the same time wherever you have in a statute power to give certain orders, you must have some sanction behind that power, and that sanction takes the shape of a penalty—a penalty which can be varied in this case within a considerable range which stops at the maximum of six months' imprisonment.

There is the other point which Mr. Narendra Kumar Basu raised in his amendment to the effect that the word "simple" should be inserted before the word "imprisonment". I am rather diffident about that expression in a statute, but I believe that the word "imprisonment" by itself includes either rigorous or simple imprisonment. On that point, Sir, I do think that we all know in this House what rigorous imprisonment means. It is not half as bad as the word itself. And secondly I do think that you are not doing a lad of 18 or 19 or 20 years a very great service if you pass upon him a sentence of simple imprisonment that is of complete idleness. I beg to oppose the amendment.

Mr. NARENDRA KUMAR BASU: May I suggest that in order to save the time of the House, there may be one vote on amendments 155 and 156?

The Hon'ble Mr. R N. REID: There is no objection to it from this side of the House.

Mr. SHANTI SHEKHARESWAR RAY: On a point of order, Sir. Can we put both the motions to one vote?

Mr. DEPUTY PRESIDENT: Yes, when the honourable mover and the Hon'ble Member in charge have agreed to this.

Mr. SHANTI SHEKHARESWAR RAY: On a point of order, Sir. It may be that I am in favour of one amendment and against the other, in that case what am I to do? I submit for your consideration and ruling that it is not possible to have one vote on two issues.

Mr. DEPUTY PRESIDENT: If you find any difficulty in casting your vote I am quite prepared to put them separately.

Mr. Narendra Kumar Basu's motion (No. 155) being put a division was taken with the following result:—

AYES.

Bakshi, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kishori Mohan.
Hoque, Kazi Emdadul.
Maiti, Mr. R.
Roy, Mr. Shanti Shekhareswar.
Raut, Babu Hassai.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.

NOES.

Afzal, Nawabzada Khawaja Muhammad, Khan Bahadur.
Ali, Mr. Altaf.
Armstrong, Mr. W. L.
Bai, Babu Lalit Kumar.
Bai, Rai Sahib Sarat Chandra.
Barman, Babu Premhari.
Bose, Mr. S. M.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Nuzzur Rahman.
Cohen, Mr. D. J.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. S. S.
Edgley, Mr. N. S. A.
Kasuji, Maulvi Bur Rahman Khan.
Faroqui, the Nawab Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. N.
Gazanvi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dildaar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Babu Profulla Kumar.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain Nawab Musharrat, Khan Bahadur.
Hussain, Maulvi Latafat.
Kasem, Maulvi Abdul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Mullick, Mr. Mahanda Sahary.
Nag, Reverend B. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. G. K.
Qasem, Maulvi Abul.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur.
Reid, the Hon'ble Mr. R. N.
Ross, Mr. J. B.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rohati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Sulaiman, Maulvi Muhammad.
Stevens, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Summer, Mr. S. R.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walter, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. DeS.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 10 and "Noes" 58, the motion was lost.

Mr. Narendra Kumar Basu's motion (No. 156) being put, a division was taken with the following result:—

AYES.

Bakshi, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Chaudhuri, Babu Kishori Mohan.
Hoque, Kazi Emdadul.
Ray, Mr. Shanti Shekhareswar.
Rout, Babu Nagendra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi, Emaduddin.
Armstrong, Mr. W. L.
Bai, Babu Lalit Kumar.
Bai, Rai Sahib Sarat Chandra.
Barma, Rai Sahib Panchanan.
Bettenley, Mr. J. M.
Bohan, Mr. D. J.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. R. S.
Edgley, Mr. H. R. A.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ghaznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dilduar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Babu Profulla Kumar.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Kasem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Maguire, Mr. L. T.
Martin, Mr. G. M.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Mullick, Mr. Mahanda Behary.
Nag, Reverend R. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-.
Reid, the Hon'ble Mr. R. N.
Rees, Mr. J. N.
Ray, the Hon'ble Sir Bijoy Prasad Singh.
Ray, Mr. Saileswar Singh.
Ray, Mr. Sarat Kumar.
Roy, Mr. S. N.
Samad, Maulvi Abdus.
Sen, Mr. B. R.
Sulaiman, Maulvi Muhammad.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Sumner, Mr. C. R.
Townend, Mr. H. F. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deS.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 10 and "Noes" 49, the motion was lost.

Mr. Narendra Kumar Basu's motion (No. 158) was then put and lost.

The Hon'ble Mr. R. N. REID: I move that in clause 16 in sub-section (*3*) for proposed section 6, in lines 5 and 6, after the word "therewith" the following be inserted, namely:—

"and that he has taken all reasonable steps to make known to the officer before whom he was directed to appear the place where he may be found and the cause which rendered it not possible for him to comply therewith."

The Select Committee inserted the words which are underlined in sub-clause (*3*), that is to say, "or that it was not possible for him to comply therewith". What they had in mind so far as I remember was that provision should be made for cases where a person was physically

incapable of obeying an order which has been passed upon him. On considering the amendment further it seemed to Government that some further qualification should be inserted in the clause and that is the genesis of my amendment—the point being that there is no reason why a person who may not be physically capable of obeying an order should not at the same time be capable of informing the due authority of the reason why he failed to obey that order. That of course would be a good defence for him in any subsequent proceedings. There seems to be no reason why he should escape the result of recalcitrance by merely pleading that he was physically capable of obeying the order, while at the same time he was also physically capable of informing the authorities why he did not obey the order.

Dr. NARESH CHANDRA SEN GUPTA: I think the clause as it stands is perfectly intelligible. If a man proves—considering the burden of proof is upon him which seems rather extraordinary—that he had no knowledge of the notification or that it was not possible for him to comply therewith, I think that ought to be sufficient defence of the charge of disobedience. Suppose he is hauled up before a Magistrate and the Magistrate is satisfied that he has no knowledge of the notification or that it was not possible for him—the word "possible" has got quite a definite meaning—to comply therewith, what more need he prove? If it were not possible for him to comply what more need he prove in order to establish his innocence? But Mr. Reid thinks that even if he proves that it was physically impossible for him to comply with the order, he must therefore prove that he had taken all reasonable steps that he made known to the officer where he may be found, etc., etc. Besides that I would draw his attention to sub-clause (2) of sub-section (3) which says "If an order made under sub-section (1) of section 2 is not served personally on the person in respect of whom it is made..... in the opinion of the Local Government, been exercised to effect such service, the Local Government may, by a notification published in the *Calcutta Gazette* and in such newspapers as it thinks fit, direct, etc., etc." How does the question of his taking reasonable steps to inform the officers arise? Suppose an order is made under section 2, the man is not to be found the order cannot be served personally upon him, thereupon the Local Government publishes a notification in the *Calcutta Gazette*. In that case how does the question of his informing the Magistrate of the place where he is to be found, come in? How would he know that the Magistrate is going to pass such an order upon him so that he could in advance inform the Magistrate. Why should he give information to the the Magistrate in advance? Why should he go and tell the Magistrate of the cause as to why it was not possible for him to comply with the order. His defence is that his disobedience of the orders is not wilful because it was not physically possible for him to comply with the order. Then how does this thing come in? If he is

proved not guilty of the offence he must nevertheless be punished because he had not told the Magistrate where he is to be found. Sir, this is absolutely foreign to the idea of criminal jurisprudence and foreign even to the Criminal Law Amendment Act. This qualification is unnecessarily imposed. He may not see the *Calcutta Gazette* at all. There are very people who read the *Calcutta Gazette*. Supposing he shows that he did not know of the order, that he did not see the *Calcutta Gazette*, yet the Hon'ble Member wants him to prove that he had taken all reasonable steps to inform the officers of his whereabouts. The Hon'ble Member, I am afraid, interprets the words introduced by the Select Committee too narrowly. There may be absence of knowledge and there may be numerous other circumstances in which he cannot inform the Magistrate. He may be detained by somebody else; he may be detained by another Magistrate under charge, he may have been restrained under section 144. Therefore, it was not possible for him to comply with the order. He should be required to further prove that he had taken all reasonable steps to make known his whereabouts, which in any of these cases he was not capable of doing.

Mr. NARENDRA KUMAR BASU: Sir, in addition to the reasons advanced by Dr. Sen Gupta, may I ask the Hon'ble the Home Member to consider whether these words are at all necessary having regard to the fact that the language of the Penal section is "unless he proves that he had no knowledge of the notification or that it was not possible for him to comply therewith". So I do not know what is the intention of Government for putting in these additional words. I would refer to the case where a man has had no knowledge of the notification. How could such a man notify his want of knowledge. That would be sheer impossibility and absurdity, but of course no absurdity is impossible when the Government draftsman sits down to make a draft of the Criminal Law Amendment Bill.

Sir, I give him that amount of credit and say that it does not refer to the first class. Secondly, he has to prove to the Magistrate that it was not possible for him to comply therewith, and why it was not possible to comply with it. What is the application of sub-section (2) of section 3 introduced by clause 14: that by a notification published in the *Calcutta Gazette* and in such newspapers as it thinks fit, direct the said person to appear before such officer of Government at such time and within such period, for the purpose of receiving an order under section 2. Well, I take it this way. Supposing a person against whom the order is made is in jail. Well, it may be that the jailor gives him notice of what he has seen in the *Calcutta Gazette* or a certain newspaper. Is it always open to the prisoner to make known to the officer before whom he is directed to appear in a different district, the place where he may be found and the cause that has rendered it

impossible for him to attend? This not only implies something absurd, but I submit, it is a distrust of the Magistrate before whom the case is tried. Unless the Magistrate before whom the case is tried is satisfied that it would not have been possible for the person to comply with the order, he is convicted. But in his anxiety to cover all possible cases, the satisfaction of the Magistrate regarding the possibility is not considered sufficient by the Home Member who wants something more,—the cause which rendered it impossible for him to comply should be notified beforehand,—why? If the cause of the impossibility has been explained to the Magistrate, that ought to be sufficient. Why should the cause of the impossibility be notified beforehand to the officer before whom he is directed to appear? Well, it is not possible for him to go according to this clause as it stands. That is, if it is not possible for him to go there, may it not be impossible for him to make this known? Suppose he is suffering from typhoid fever and in bed, and it was not possible for him to write to the officer at a distant place, that is why it was impossible for him to appear. That same reason may be the reason for his inability to notify the officer at that time. In fact by making this addition the Hon'ble Home Member wants to take away any effect that there might be in this power. I submit this nullifies the addition made by the Select Committee, and takes away with the right hand what is given with the left. Supposing the man is suffering from delirium tremens and it is impossible for him to notify the officer; what is he going to do? I submit it is ridiculous to have this addition, so I oppose it.

Mr. N. G. A. EDGLEY: I am afraid with regard to this particular amendment that Mr. Sen Gupta in his speech is labouring under a misapprehension. He seemed to forget that the amendment relates to the second portion of this clause, namely, the portion which begins with the words "or that it was not possible for him to comply therewith." Mr. Sen Gupta argues that non-compliance might have been brought about by a lack of knowledge. Mr. Narendra Kumar Basu, on the other hand, was good enough to admit that the second part of this sub-clause might imply knowledge. As a matter of fact what a man has to prove is, either that he had no knowledge, or that if he had knowledge it was not possible for him to comply with the notification. He will also have to prove those things mentioned in Mr. Reid's amendment. Well, it seems to me quite reasonable that if a man has knowledge of the notification, he should be required to prove those matters mentioned in Mr. Reid's amendment in order to show his good faith. Mr. N. K. Basu said, for instance, that the man might be in jail, and it might therefore be impossible for him to take reasonable steps to make his whereabouts known to the officer concerned, but surely, if a man is in jail and he hears that such a notification has been issued against him,

all that he has to do is to communicate with the jail warder or the jailor, and ask him to inform the officer before whom he had been directed to appear. It seems to me, therefore, that Mr. Reid's amendment is perfectly reasonable, and not only reasonable, but necessary.

The Hon'ble Mr. Reid's motion being put, a division was taken with the following result:—

AYES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Armstrong, Mr. W. L.
Ashworth, Mr. S. G.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Saral Chandra.
Barman, Babu Premhari.
Bose, Mr. S. M.
Cottenham, Mr. J. M.
Burn, Mr. N. N.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Cohen, Mr. D. J.
Dain, Mr. R. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. R. R. A.
Faroqui, the Hon'ble Nawab K. N. M., Khan Bahadur.
Fawcus, Mr. L. [illegible]
Ferguson, Mr. E. H.
Ghuznavi, the Hon'ble Alhaj Nawab Bahadur Sir Abdelkerim, of Dilduar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Kasem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Magaire, Mr. L. T.
Martin, Mr. C. M.
Mitter, Mr. S. C.
Mullick, Mr. Mahendra Behary.
Nag, Reverend S. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nichall, Mr. S. K.
Qasem, Maulvi Abul.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-.
Reid, the Hon'ble Mr. R. R.
Ross, Mr. J. B.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Ray, Mr. Saileswar Singh.
Ray, Mr. S. R.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Sulaiman, Maulvi Muhammad.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Sumner, Mr. S. R.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deS.
Woodhead, the Hon'ble Mr. J. A.

NOES.

Bakshi, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Chaudhuri, Dr. Jogendra Chandra.
Gupta, Mr. J. N.
Haque, Kazi Emdadul.
Khalil, Mr. R.
Rahman, Maulvi Aziznr.
Ray, Mr. Shanti Shekhareswar.
Ray Chaudhury, Babu Satish Chandra.
Rout, Babu Hemai.
Roy Chaudhuri, Babu Nem Chandra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.

"Ayes" being 55 and "Noes" 15, the amendment was carried.

Mr. NARENDRA KUMAR BASU: I beg to move that in clause 16 in proposed section 6 (*3*), line 7, for the words "seven years" the words "one year" be substituted.

I also move that in clause 16 in proposed section 6 (*3*), line 7, for the words "seven years" the words "two years" be substituted.

I also move that in clause 16 in proposed section 6 (*3*), line 7, for the words "seven years" the words "three years" be substituted.

Sir, again my submission is that the sentence proposed is much too drastic, in fact savage. The offence under clause 3 is failure to comply with any direction in a notification published under sub-section (*2*) of section 3, that is a direction to appear at a certain place and at a certain time for the purpose of receiving the order. I submit that in all conscience to give seven years as the maximum for not coming to a certain place to receive the order is much too much. We have already by the first sub-section of this clause provided that the disobedience of a direction made under sub-section (*1*) of section 2 shall be punishable with imprisonment for seven years. But before any direction under sub-section (*1*) of section 2 is made the man is directed to go and appear to receive an order at a certain place. If he does not come, the sentence is proposed to be seven years. I know I will at once be told that whatever has fallen from the Government draftsman is sacrosanct and that it is merely the maximum and is meant to be deterrent. I submit that even having regard to that, Government ought to have some sense of proportion. Failure to come to a certain place to receive a direction under sub-section (*1*) of section 2 is not quite the same thing as disobeying a direction. If the maximum punishment for disobeying a direction under sub-section (*1*) is seven years, certainly the failure to comply with a direction under sub-section (*2*) to receive the order ought to be punished with much less and to place all these offences in the same category and make them punishable with seven years is very drastic, and I do not think that is good legislation. As I interjected on a point of information some time back that, in order to make it completely deterrent, the House may as well be asked to provide for death sentence, because the sentence proposed was too much out of proportion with the offence. The same thing, I submit, occurs here and to make it seven years is out of all magnitude. I have therefore proposed three alternatives, 1, 2 and 3 years, and I leave it to the Hon'ble Member to accept whichever he thinks fit.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to support the amendments. One has got to look into the gravity of the offence to determine whether the sentence is adequate or otherwise. A notification is provided for in cases where personal service cannot be made, but it may be that the person against whom the proceedings are taken is not to be found in the locality and may be quite innocent and may not know anything about the notice, and it is in such cases that a notification is provided for. When a notification is issued, it is quite possible, and I think in most cases it is probable, that the man will not know anything about the notification. The notification is in the *Calcutta Gazette* and

few people have access to it, especially in outlying areas. It is not a notification published in the local newspapers so that most people may know of it. Unless the person against whom this notification is issued can prove that he had no knowledge of it he will get seven years, but it may not be possible for him to prove that he had no access to the *Calcutta Gazette*. As I have already submitted, most persons have no access to the Gazette, so the word "unless" is meaningless. Considering the fact that in most cases the man may not know anything of the notification, this sentence is simply unconscionable, and what is proposed in its place is extremely moderate. I think that in such cases a nominal punishment will suffice.

The Hon'ble Mr. R. N. REID: I regret that I cannot accept these amendments. I do not wish to repeat the arguments that I used some time ago on a slightly different sub-clause, because I feel that the circumstances are so little different that the same sentence is proper in the one as it is in the other. In this case the circumstances under which an individual makes himself liable to the provisions of sub-clause (*3*) of section 6 are first that there has been an order on him to do something or not to do something whatever it is. That has not been served on him personally but due diligence has been exercised to effect such service. The next step that the Local Government take is to notify in the *Calcutta Gazette* to the effect that the person shall appear at a particular place before a particular officer to receive the order. It has been urged that the person may not knowingly disobey the order, but behind that there is the fact that the order has been issued which has not been obeyed. The two things in my mind are on all fours, and I do not want to repeat the arguments that I have already used.

Mr. Narendra Kumar Basu's motion (No. 163) being put, a division was taken with the following result:—

AYES.

Bakhs, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Choudhuri, Babu Kishori Mohan.
Haque, Kazi Emdadul.
Mallik, Mr. B. B.
Rahman, Maulvi Azizur.
Ray, Mr. Shanti Shekhareswar.
Ray Choudhury, Babu Satish Chandra.
Rout, Babu Nagendra.
Roy Choudhuri, Babu Hem Chandra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.

NOES.

Abul, Nawabzada Khwaja Mohammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emadeddin.
Ashworth, Mr. S. G.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Saral Chandra.
Barma, Rai Sahib Panchanan.
Bose, Mr. S. M.
Bolkowley, Mr. J. N.
Choudhuri, Khan Bahadur Maulvi Nafizar Rahman.
Cohen, Mr. D. J.
Dain, Mr. G. G.
Dain, Mr. S. R.
Das, Rai Bahadur Kamini Kumar.

Dutt, Mr. G. S.
Edgley, Mr. H. G. A.
Faroqui, the Hon'ble Nawab H. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dildusr.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Hagna, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Maguire, Mr. L. T.
Martin, Mr. O. M.
Mittor, Mr. S. C.
Mullick, Mr. Mukunda Behary.
Nag, Reverend, B. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Quasem, Maulvi Abul.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-.
Ray, Babu Rajendra Narayan.
Reid, the Hon'ble Mr. R. N.
Ross, Mr. J. B.
Roy, Mr. Saileswar Singh.
Roy, M . Sarat Kumar.
Roy, Mr. S. N.
Sahana, Babu Satyendrakinkar.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Rai Sahib Akrboy Kumar.
Sen, Mr. S. R.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Sumner, Mr. C. R.
Thompson, Mr. W. H.
Townsend, Mr. H. F. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. N. R.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 14 and "Noes" 51, the amendment was lost.

Mr. Narendra Kumar Basu's motion (No. 167) was put and lost.

Mr. Narendra Kumar Basu's motion (No. 170) was put and lost.

Mr. DEPUTY PRESIDENT: I will take motion Nos. 176-84 together.

Mr. P. BANERJI: I beg to move that in clause 16 proposed section 6A be omitted.

You will find, Sir, that this is a most wonderful piece of legislation, in which for the offence of a son or a ward, the father or the guardian is going to be punished. We are all aware, Sir, that during the reign of the mighty Mogul Emperor Aurangzebe, a tax called the *zezia* tax was imposed upon the Hindu Community but, Sir, by the passing of that tax what happened? The result was that the mighty Mogul Empire that the great Akbar had built up was shattered and subsequently came to an end. Sir, we do not know whether we are still under the Mogul Emperors when the people got dissatisfied and the Mogul rule came to an end. Subsequently collective fines were imposed in different parts of Bengal so that the people suffered, for offences committed by other people. What happened then———

Khan Bahadur MUHAMMAD ABDUL MOMIN: On a point of order, Sir. Is the speaker in order in discussing the history of the Mogul Empire in connection with this amendment?

Mr. DEPUTY PRESIDENT: He will, I hope, show the relevancy as he develops his arguments.

Mr. P. BANERJI: The collective fines imposed upon the people have made the people exasperated. Khan Bahadur Abdul Momin did not find any relevancy whatsoever in my reference to the *zezia* tax but the fact remains that when this question was raised in this Council he himself put several questions on the floor of this House. Sir, public memory is very short and naturally the memory of the Khan Bahadur after his retirement has been very short. Also, Sir, in connection with this fine that is going to be imposed I may say that Æsop stands vindicated to-day. We have all read in the Æsop's Fables the story of the wolf and the lamb but now find that that very story is going to be repeated here. In the story the wolf wanted to devour the lamb and as an excuse put forward the argument that the lamb had made his water dirty although the current was flowing downwards. We all knew, Sir, that the stories in the Æsop's Fables were really fables but by the passing of this legislation the Hon'ble Member has now practically turned the fables into a practical reality. Therefore if in connection with this fine I said in the beginning that this Bill is barbarous now I say that this clause is more than barbarous. It has been suggested by several speakers that the result of the imposition of such a fine on parents would be that the parents would get exasperated and would not come to the help of the authorities in bringing their children or boys to book. Sir, this section is going to upset absolutely the intention of Government and that is why I say that to-day the great Æsop stands vindicated in the hands of the Hon'ble Member. With these words Sir I commend my motion to the acceptance of the House.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I have addressed this House at various hours of the day and it is my misfortune or good fortune to address the House now at midnight. I do not know whether I shall be able to impress the House at this unearthly hour. Sir, I have a sense of duty and I have come here to-night though I am feeling very unwell and though I know that the benevolent Government who is so anxious to take charge of our young men is not going to provide me with money to pay the doctor's bill if I fall ill. However, Sir, I shall make an endeavour to convince the House of the injustice of this provision. Earlier in this Bill we have made a provision that the court can fine a person under 21 years of age; so it follows that it can fine a young boy of ten also for no minimum has been fixed but only the maximum has been fixed. But it is rather queer or, I cannot exactly find at this hour the proper term by which I can express my feeling about the matter. But the thing remains that Government has not fixed any minimum age, so it may quite happen that they may fine a baby of 3 years of age, a dawdler of 6 years or a youth of 16 years. Now Sir, these little children may disobey the orders of the District Magistrate without realising the full implication of such an order. But there is this provision in this Bill that is being

rushed through this Council at this hour of the night in the interest of the State. He may be fined by the court and discretion is being given to the court to impose a fine on the parents of the boy instead of on the boy himself. Now, Sir, what would be the feeling of the parents in this matter? Perhaps he has a small boy of ten who has unwittingly disobeyed one of the absurd orders passed by the District Magistrate—perhaps in a spirit of bravado——

Mr. DEPUTY PRESIDENT: Order, order. It is now 12 o'clock and I must adjourn the Council.

Adjournment.

The Council was then adjourned till 10·30 a.m. on Saturday, the 10th March, 1934, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Saturday, the 10th March, 1934, at 10-30 a.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHAUDHURI, KT., of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers, and 95 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Dinajpur railway station drains.

***107. Maulvi HASSAN ALI:** (*a*) Is the Hon'ble Member in charge of the Public Works (Railways) Department aware that at the Dinajpur railway station drains running to the west by both sides of the line terminate at a place which is very contiguous to the houses of many inhabitants?

(*b*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of urging the railway authorities to remove this longfelt grievance of the people? If not, why not?

MEMBER in charge of PUBLIC WORKS (RAILWAYS) DEPARTMENT (the Hon'ble Mr. J. A. Woodhead): (*a*) Yes.

(*b*) The Railway Agent reports that the outfall of the main drain is into a canal or ditch, outside railway boundaries, and that this canal has been allowed by the municipality to silt and become overgrown with vegetation to such an extent that the passage of water from the railway drain is blocked resulting in an accumulation of stagnant water near the outfall of the latter, and the volume of this water is increased by the municipal sullage water which the municipality has diverted into the railway drain. It appears that if the canal were cleared by the municipality, the difficulty would disappear.

On the other side of the line, it is reported that there is also a patch of stagnant water, which comes from a *kutcha* municipal drain. In this case also, the solution of the difficulty seems to lie in the hands of the local municipal authorities.

Babu SATISH CHANDRA RAY CHOWDHURY: Will the Hon'ble Member be pleased to state if any report has been taken from the municipality or their attention drawn to the matter?

The Hon'ble Mr. J. A. WOODHEAD: Yes, Sir: I believe the Public Health Department is dealing with the matter.

Maulvi SYED MAJID BAKSH: Was the municipal sullage water diverted to the railway drain with the consent of the railway authorities?

The Hon'ble Mr. J. A. WOODHEAD: No, I should think not.

Maulvi SYED MAJID BAKSH: Then, why did the railway authorities allow it to be done?

The Hon'ble Mr. J. A. WOODHEAD: I cannot say.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Arrest of the Editor, "Chatra Dal."

51. Maulvi MUHAMMAD FAZLULLAH: (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to state whether Debangshu Sen Gupta, Editor, *Chatra Dal*, a Bengali periodical, was taken by the Police, Special Branch, Calcutta, from 91, Ashu Mukherjee Road, the office of the said paper, to give a statement on the 29th January, 1934?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state—

(*i*) the reason why the boy was taken to the police-station; and

(*ii*) where is he now?

(*c*) Is the Hon'ble Member aware—

(*i*) that the boy is an I.A. candidate; and

(*ii*) that he had high temperature when he was taken to the police-station to give a statement?

(*d*) If the answer to (*c*) is in the affirmative, are the Government considering the desirability of making necessary arrangements for his examination and medical treatment?

MEMBER in charge of POLICE DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) Yes. He was arrested.

(*b*) (*i*) Government are of opinion that it would not be in the public interest to publish the reasons.

(*ii*) He was discharged on the 5th February, 1934.

(*c*) (*i*) Yes.

(*ii*) He had slight fever the day following his arrest.

(*d*) Does not arise.

Extra establishment in the Registration offices of the 24-Parganas district.

52. Mr. A. F. M. ABDUR-RAHMAN: (*a*) Will the Hon'ble Minister in charge of the Education (Registration) Department be pleased to lay on the table a statement showing the amounts, office by office, spent over the extra establishment by the Registration offices in the district of the 24-Parganas during the years 1932 and 1933?

(*b*) Will the Hon'ble Minister be pleased to state how the services of the officers who kept down the expenditure on account of extra establishment during the untoward financial crisis are being recognised by Government?

MINISTER in charge of EDUCATION (REGISTRATION) DEPARTMENT (the Hon'ble Mr. Khwaja Nazimuddin): (*a*) A statement is laid on the table.

(*b*) It is the duty of every sub-registrar to keep all expenditure, including that on temporary establishment, as low as possible and there is no justification for special recognition of the services of any particular officer on this account. The management of his office is, however, a matter to which particular importance is attached in the estimate of an officer's character and merits.

Statement referred to in the reply to unstarred question No. 52 (a), showing the amounts, office by office, spent over the extra establishment by the Registration offices in the district of the 24-Parganas during the years 1932 and 1933.

Name of office.	Amount, office by office, spent over the extra establishment during 1932.		Amount, office by office, spent over the extra establishment during 1933.	
	Rs.	A.	Rs.	A.
Alipore	1,560	15	1,717	4
Behala	..		..	
Sealdah	17	6	8	8
Bhangore	22	12	..	
Budge Budge	61	3	23	8
Bistupur	..		16	1
Baruipur	76	12	65	4
Joynagar	..		..	
Dakshin Barasat	132	12	78	7
Matla	87	12	51	0
Diamond Harbour	172	4	130	2
Falta	..		33	15
Kakdwip	65	8	36	6
Ghatawara	84	5	138	1
Mathurapur	31	4	92	0
Mograhat	174	10	159	10
Eyarpur	38	8	..	
Barrackpore	29	8	..	
Cossipore	61	8	76	11
Dum Dum	..		..	
Naihati	66	12	23	9
Barasat	66	2	..	
Deganga	62	8	37	14
Habra	..		..	
Basirhat	265	6	148	15
Hasnabad	..		..	
Baduria	62	2	..	
Haroa	..		..	

LEGISLATIVE BUSINESS

GOVERNMENT BILLS

The Bengal Criminal Law Amendment Bill, 1934.

Mr. NARENDRA KUMAR BASU: May I, with your permission, Sir, move a short-notice amendment which the Hon'ble Member in charge of the Bill has consented to accept with reference to adding a new clause 7A to the Bill.

Mr. PRESIDENT: An independent clause? Well, you may then move it after the disposal of the present clause.

Gentlemen, I hope you have had a refreshing sleep last night, in spite of the metallic jingling of the division bell and the thunderous eloquence of the opposition leader. (Laughter.) I hope you are in

a mood to help to finish the business which has been hanging on you much too long. With the concurrence of the House, I propose to cut down the time-limit to ten minutes for those who will move amendments and those who will reply on behalf of Government and to five minutes for others.

I think Mr. Shanti Shekhareswar Ray was in possession of the House last night.

Clause 16.

Mr. SHANTI SHEKHARESWAR RAY: As I was saying last night, or to be more correct, early this morning, that a boy of ten might be held up for disobeying an order.

Babu SATISH CHANDRA RAY CHOWDHURY: Will your order, Sir, with regard to the time-limit, have retrospective effect. I believe, Mr. Ray had already spoken for ten minutes yesterday.

Mr. PRESIDENT: I allow him to go on.

Mr. SHANTI SHEKHARESWAR RAY: Now, to ask the father of the boy to pay a fine is certainly unfair. Sir, the intention is to seek the co-operation of the parent or guardian in controlling the boy. May I ask whether this co-operation can be expected under the threat of fine. If the father is expected to exercise a certain amount of control, why should he be penalised for the misdeeds of his son? I know that this provision is hedged in with certain safeguards, and an opportunity will be given to the father to place his view before the District Magistrate and secure a remission. But, Sir, even then, why should he be put to that trouble? Is it the way to secure co-operation by antagonising the parent from the very beginning? The real intention hidden behind this provision is the mailed fist which the Government want to show to the parent. Sir, as I have already stated, I appreciate the good intention of the Government in the matter: As a matter of fact, Government have realised where the trouble lies in the matter. Certainly it is desirable to see that our boys are not contaminated in any way. Sir, instead of holding out the mailed fist, it ought to be the duty of Government to satisfy the parent that what action Government propose to take is, in the interest of the boy, and that there is no intention of penalising the parent. Unless there is co-operation between the parent and the Government or the District Magistrate who acts on behalf of the Government, this measure is bound to fail. Sir, I will state my points in this way. Supposing the Corporation of Calcutta, when there is an outbreak of cholera in the city, wants to stop it; can the Corporation secure better results by threatening that those who refuse to have the injection will get ten stripes each? What will be the feeling amongst the people in that case? Naturally, there will be resentment and strong opposition to the measure that is intended for their interest.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to support this amendment. This is one of the clauses of the Bill which is bound to frighten every guardian who has money to lose and in the practical working of the Bill it will cause very great hardship. The reason is apparent. Supposing the guardian is taken into the confidence of the District Magistrate who gives him advice and suggestion as to the way in which the ward is to be dealt with. Acting upon his advice, the guardian who lives in the town sends his boy away to his village home. Supposing that was the advice of the District Magistrate who thought that the atmosphere of the town was not good for the boy. In his village home the boy would not be under the direct watch of the guardian and, supposing that the boy out of some boyish trick or deliberately leaves his home. The result will be that the guardian will be fined Rs. 1,000 and he will be fined, in spite of the fact that he has acted upon the advice of the District Magistrate and that he has done all that was possible for him to help the authorities in the matter. There may be another case; of a poor boy who is allowed to live by a rich relative—he may be a very distant relative—for the purpose of the prosecution of his studies. Such things happen in our society, and supposing that the boy is ordered to be in the House between 4 and 6 in the afternoon. Then in that case the gentleman under whose care the boy is living will have to employ a constant attendant for the boy, otherwise he will be fined for any delinquencies on the part of the supposed ward. Sir, the ultimate effect of this will be that poor relations will not find any shelter in the house of relatives for the purpose of prosecuting their studies. It is one of the most monstrous clauses in the Bill. Sir, if by this way it is meant to penalise the guardians of boys, then I will ask you, Sir, to allow me to move a short-notice amendment to the effect that there should be a complete birth control and sterilization after the Nazi method in Germany, so that we may be the last of the race, and that the future generation may not come into being either to trouble Government or to regenerate the country. I hope every guardian in this House will raise his voice against such a drastic and unreasonable clause.

Babu KISHORI MOHAN CHAUDHURI: This is a very important clause and there is a departure from the elementary principle of law. I hope the Hon'ble Member in charge of the Bill will consider this aspect of the question. If this measure is intended for the suppression of the terrorist movement and securing co-operation of the parent or guardian of the youthful generation, then I am afraid, Sir, it would defeat the purpose for which it is intended. To fine one person for the fault of another is a thing which cannot be justified by any stretch of imagination. Under sub-section (2) of clause 17, it is stated that before an order is passed, the parent or guardian will be given an opportunity to appear and be heard, and no such order shall be made

if the parent or guardian satisfies the court that he has not conduced to the commission of the offence by neglecting to control the offender. Sir, under this you are throwing the onus of proof entirely upon the parent or guardian for things over which he may not have any knowledge or for circumstances over which he may not have any control. That, Sir, as I have already said, is a departure from the very principle of elementary law. So, Sir, this clause should not be adopted in the way it has been framed. For these reasons, I appeal to the Hon'ble Member to take the above simple facts into consideration before this clause is passed.

The Hon'ble Mr. R. N. REID: The main value of this provision that a fine should be realised from a parent or guardian seems to me this: It should be, we hope, an inducement to parents and guardians to exercise better control over their boys and for those who are in their charge, and if they know that failure to exercise this control may land them in the position of having to pay a fine for the delinquencies of those for whom they are responsible. Also I am quite clearly of opinion and I know that this House will agree, that imprisonment for this offence is not desirable if it can be avoided, and if you can substitute for it a fine so much the better. But the offenders in this case have as a rule a little or no property of their own and, therefore, this provision is put in by which the fine, if it is impossible, can be realised from parent or guardian. It would bring home to the parents or guardians their responsibility and also it would avoid the necessity of sending the offenders to prison. With these words, I oppose the amendment.

Mr. PRESIDENT: I may tell the House that by an order of the President the bell is to ring for three minutes when a division is called. I would like to change that order of the President and rule that until we have finished with the Bill now before the House, the division bell would ring only for one and a half minutes. I warn members both official and non-official to be either in the Chamber or near about it so that they may come in time to participate in the voting, if they so desire.

Mr. NARENDRA KUMAR BASU: We welcome that, Sir.

Mr. P. Banerji's motion being put, a division was taken with the following result:—

AYES.

Sahab, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Basu, Mr. S. M.
Chaudhuri, Babu Kishori Mohan.
Choudhury, Maulvi Nurul Abser.
Gupta, Mr. J. N.
Hoque, Kazi Emdadul.
Maiti, Mr. R.
Mookerjee, Mr. Syamaprasad.
Ray, Mr. Shanti Shekhareswar.
Ray Choudhury, Babu Satish Chandra.
Rout, Babu Nagendra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Bal, Babu Lalit Kumar.
Basir uddin, Khan Sahib Maulvi Mohammed.
Bettomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman
Cohen, Mr. D. J.
Dutt, Mr. S. S.
Edgley, Mr. R. G. A.
Ghuznavi, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Mr Abdulkerim, of Dildusar.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, Nawab Musharruf, Khan Bahadur.
Hossain, Maulvi Muhammad.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Mr. Razaur Rahman.
Khan, Maulvi Tamizuddin.
Maguire, Mr. L. T.
Martin, Mr. D. M.
Miller, Mr. S. G.
Momin, Khan Bahadur Muhammad Abdul.
Mullick, Mr. Nukuzda Behary.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Norton, Mr. H. R.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Ray, Babu Khetter Mohan.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Surut Kumar.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Townend, Mr. H. P. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. DeC.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 17 and "Noes" 48, the motion was lost.

The motion that clause 16, as amended, stand part of the Bill, was then put and agreed to.

Short-notice motion after clause 16.

Mr. NARENDRA KUMAR BASU: Sir, I beg to move that after clause 7, the following be inserted, namely:—

"7A. In sub-section (*1*) of section 4 of the Indian Press (Emergency Powers) Act, 1931, before *Explanation 1* the following proviso shall be inserted, namely:—

'Provided that no such declaration shall be made in a case to which clause (*j*) applies unless the keeper of the printing-press has had an opportunity of showing cause why such declaration should not be made.' "

The Hon'ble Mr. R. N. REID: Sir, I am prepared to accept the amendment.

The motion was put and agreed to.

Clause 17.

Mr. NARENDRA KUMAR BASU: I beg to move that clause 17 be omitted.

I beg also to move that in clause 17(*2*) in the proposed proviso to section 7(*1*) in line 3 after the word "taken" at the end the following words be added, namely:—

"Or to furnish such officer with specimens of his hand-writing and signature."

Sir, the object of this section though expressed in a way which is not very clear to laymen is that every person in respect of whom an order has been made under the new sub-section of section 2, that is to say every young person shall permit himself to be photographed, furnish the officer authorised in this behalf with specimens of his handwriting and signature, etc. This is another glaring instance of inconsistencies between the promise and the fruit. The Government has been trying to establish before the House that the new provisions with regard to these youths under 21 are only meant to reclaim young men or women who are on the verge of terrorism and that Government in their parental solicitude for these youths are trying to wean them away as much as possible from terroristic ideas and movements. I should have thought that one of the principal ways by which this could be done was to treat them as little as possible as criminals or convicts or persons against whom orders of detention and internment have been passed. Here, Sir, the Government proposes that these young men should be directed by an officer authorised in this behalf by a general or special order of the Local Government, that is to say, any policeman or any other officer, to attend before him and allow himself to be photographed and furnish him with the specimens of his handwriting and signature. Firstly, it seems to me that this provision is absolutely unnecessary. In these days, if the Government were really anxious to have a photograph of anybody, I do not think it is necessary that the "photographee" should permit himself to have his photograph taken. The photograph of a person can be taken at any time, and here is not a young man who is hiding. He is going about, and the Government is supposed to consult his parents and guardians under the provisions of the new section. There is absolutely no reason why the words "permit himself to be photographed" should be there and why the words "furnish with specimens of his handwriting and signature" should be at all necessary, I cannot understand. You are thinking of young men who are not terrorists but of people whom on your police reports, you suspect to be on the verge of terrorism, and you want to wean such people away. Therefore, you direct that he shall appear before a certain policeman and give his specimen handwriting and signature and on the failure of that he will be punishable under this clause with imprisonment for a term of six months or with fine which may extend up to Rs. 1,000 or with both. I submit that if the real intention of the Government is to try and help these young men, this sort of pin pricks should be avoided as much as possible. As I do not think that these provisions ought to apply to such young men, I move that the entire clause be omitted.

But if that is not accepted, I am moving my next amendment. The House will find that there was a provision in the original Bill that finger-print should be taken, but that has been deleted by the Select Committee. But the other two provisions to permit himself to be

photographed and to furnish the officer with his specimens of handwriting and signature have been retained. I submit that at least the provision for furnishing with specimen of signature should be deleted and provision for permitting himself to be photographed will die a natural death, as no permission will be ever necessary to have to photograph of the man. Moreover, if the father or the guardian is in consultation with the District Magistrate, I submit a specimen of the handwriting of a young person may very easily be obtained. Under these circumstances, Sir, I commend my motion No. 185 to the acceptance of the House. But if that is lost, I would commend my other motion No. 187 to its acceptance.

The Hon'ble Mr. R. N. REID: I think that Mr. Basu has made a good deal of rather unnecessary criticism of the provisions of this clause. There is nothing very derogatory, nothing very harmful in permitting oneself to be photographed and furnishing one's handwriting and signature. If a man has a perfectly clear conscience, I cannot see how such a person can have any objection to furnishing his handwriting specimens or his signature. On the other hand, the law has to attempt to provide for eventualities as far as it can. No law can be perfect, though I did hear it suggested the other day in this House that it ought to be. The point in this clause is this, that it is conceivable—and, I am afraid, it is possible—that many of these boys may eventually, in spite of our efforts and the efforts of the guardians, find themselves in a terrorist conspiracy, and when they find themselves mixed up with terrorists it might be useful to the authorities to have their photographs and specimens of handwriting and signature. On the other hand, the Select Committee deliberately left out—and we agreed to it—the provision for taking finger-prints as it was considered that the people with whom we were concerned should not be treated on the level as ordinary criminals or *dagis*. So I beg to oppose the amendments.

The motions were then put and lost.

The motion that clause 17 stand part of the Bill was put and agreed to.

Clause 18.

Babu KISHORI MOHAN CHAUDHURI: I beg to move that in clause 18 in proposed section 10A(*2*), line 4, after the words "the District Magistrate may," the words "after giving such person or the parent or guardian of such person, as the case may be, an opportunity to appear and be heard" be inserted.

I suggest that if there is any order of suspension or cancellation, in that case the persons concerned may be given an opportunity to be heard. There is no such provision in the clause. Therefore, I suggest that this may be inserted, that is, after giving such persons or parents

or guardians of such persons, as the case may be, an opportunity to be heard. This is a very simple amendment, and I hope that there will be no difficulty in accepting this suggestion. I need not take much of the time of the Council.

The Hon'ble Mr. R. N. REID: In view of what Kishori Babu says, I am prepared to accept the amendment.

The motion was put and agreed to.

The motion that clause 18, as amended, was put and agreed to.

Clauses 19 and 20.

Babu KISHORI MOHAN CHAUDHURI: I beg to move that clause 19 be omitted. Sir, Act VI of 1930, says:—

"The Local Government shall make to every person, who is placed under restraint by reason of an order made under sub-section (*1*) of section 2, such monthly allowance in cash or in kind or both for his support, as is, in the opinion of the Local Government, having regard to his other sources of income, adequate for the supply of his wants, and shall also make to his family, if any, and to such of his near relatives, if any, as are in the opinion of the Local Government dependant on him for support, an allowance of such amount as is, in the opinion of the Local Government, having regard to their other sources of income, adequate for the supply of their wants according to their rank in life."

This is quite sufficient. Why should a further restriction be given and why should it be necessary to inquire what he could earn if he were not detained and how he could maintain his family, and it should be restricted only to his capacity for earning and in what way he should maintain his family and other dependants upon him. All this is not very easy to ascertain. It may be necessary for one to beg or borrow, or to sell some property and in case where the man has some property it may not be necessary for him to go to earn but with difficulty he could manage to maintain his family. In such cases it would be a real hardship if the proposed inquiry is to be made. The existing arrangement is quite sufficient and there is no necessity to restrict the power and no attempt should be made to reduce the monthly allowance. What is necessary to inquire is the position which one holds in society and this can be easily ascertained and in the discretion of the Government it is to be determined. That is quite sufficient. Unnecessarily creating difficulties which will increase discontentment should not be done and in that view I move that this clause may be omitted altogether.

The Hon'ble Mr. R. N. REID: I beg to move that in clause 19 in the proposed amendment of section 12, line 1, for the words "and shall also make to any," the words "and may also make to any" be substituted.

Sir, this amendment intends to replace the word "shall" put in by the Select Committee by the word "may" which appeared in the original draft. When Government came to consider the alteration made by the Select Committee, they found themselves unable to accept that portion of the modification which was made by the Select Committee. As I said when I was introducing the Bill, there are cases where a person or persons who may have been detained belong to a family all of which are holding the same opinion as that person. My point is that there are cases in which a person or persons may have been detained, and the family to which he belongs are all of the same school of thought as he himself is, and to grant allowances to such persons under these circumstances is I maintain indefensible, and for this reason Government came to the conclusion that we ought to have full discretion to withhold allowances altogether in cases where they will be clearly unjustifiable. There is no intention, I want to repeat that again, to use this clause either to withhold allowances in the future or to withdraw allowances which have been made in the past, and Government do not intend and they are not out to cause hardship by the use of this clause where hardship may occur. On the other hand, they do not intend to give allowances where hardship does not exist or where there is no justification on other grounds to grant allowances. Therefore, they hold that they should have discretion to withhold allowances and for that reason I have moved this amendment to put in the word "may" instead of "shall" to make it clear that unworthy cases shall not be entitled to allowances as of right. And again, speaking more with reference to the final wording of the clause, you might have cases where a person, who has been put under restraint, was contributing to the joint family budget, but on the other hand their family is perfectly well off and was not dependent on that contribution. In such a case, under the clause as it stood in its mandatory form, an allowance would have to be given which was unnecessary and the non-giving of which would not cause any hardship. That, Sir, is the point I would like to put forward in explanation of this amendment to substitute the word "may" as it originally stood in the draft Bill for the word "shall."

Babu JATINDRA NATH BASU: I have listened to the argument urged by the Hon'ble Mr. Reid in support of his amendment. I am afraid that there is likelihood of an interpretation being put on the amendment to the effect that there would be an attempt to take advantage of this amendment to starve certain people into submission. From what the Hon'ble Mr. Reid explained there is no doubt that such

an object is far from what is in the minds of the Government. But the Hon'ble Mr. Reid cannot avoid the feeling that is bound to be given rise to by this amendment that where a man is kept in detention without trial and certain persons are dependent on him, for instance, his wife, or his infant children and so on, that the Government should have the right to prevent any allowance being given for the maintenance of such dependants. Sir, the principle, I believe, in these cases under the present provision of the law is to pay allowance to those who are actually dependent. The instance to which the Hon'ble Mr. Reid has referred, namely, contribution to the general expenses of a family, it is not a compulsory contribution. If it appears that the family does not consist of such members only who in the ordinary course of things must be dependent on the person detained, then there is no compulsion to provide maintenance allowances for such a family or the members of such a family. Sir, in these days where one of the prolific reasons for public discontentment is supposed to be the low economic level of the life of the people, particularly of the middle classes, it is taking a very risky step to add to the economic distress, and I do not see how providing food and clothing to the wife of a person detained or providing maintenance to the children who are unable to earn their own livelihood can encourage terrorism or can encourage an atmosphere which is likely to lead to terrorism. The taking away of a man from his family without trial and detaining him indefinitely are things that cannot under the ordinary course induce the members of the family to feel very kindly towards the authority that has effected such removal and detention. In the normal state of things they will certainly feel a certain amount of antagonism in their minds. Human nature is everywhere the same. Government can hardly expect people to be otherwise. Whether that kind of antagonism will lead to the spread of active disaffection because by being deprived of their food and raiment by the action of Government is a matter for Government to consider. I think the Select Committee must have, after a very careful consideration, adopted the words as it emerged its deliberations.

Mr. SYAMAPROSAD MOOKERJEE: It is surprising that a further attempt should be made by the Hon'ble Member to do away with one of the amendments made by the Select Committee with regard to the various provisions of this Bill. I know that this amendment was seriously considered in the Select Committee and the Hon'ble Mr. Reid, the Member in charge of the Bill, did not give any note of dissent with regard to this change made in the Select Committee. I take it, therefore, that the individual view of the members of the Select Committee was that this change was a salutary one and was desirable, and we have not been given any reason whatsoever why the Council should be asked to go back on the recommendation made by the Select Committee. I

frankly say that while listening to the Hon'ble Mr. Reid's speech, it struck me as one of the most unconvincing speeches which he has ever made. Perhaps he himself is aware of the weakness of the case. What is the position? Even as it stands now the clause gives ample powers to Government to curtail the allowance. But the principle of granting allowances is accepted by the Council, and it was embodied in the Bill, discretion being left entirely to Government to regulate the amount. Looking at the provision of the Bill as it stands and the report of the Select Committee, I find it says that the allowance towards the maintenance of a family would be made as might be appropriate in all the circumstances of the case and when the Government may in the circumstances indicated by the Hon'ble Member make even a nominal grant to the family. What is the reason which has been put forward by the Hon'ble Member for the acceptance of this amendment? The only reason that has been put forward is that there may be a detenu, all the members of whose family may belong to the terrorist school of opinion. I do not think that can ever be the case, but if that is so, the powers of the Government are ample. Such other members themselves can be arrested and put in detention camp, but obviously there will be no case where there will be members of a family who will all belong to the terrorist movement. If the Government is sincere, will it accept a suggestion that a proviso be added to the amendment to the following effect:—

"Provided in a case where all the members of the family belong to the same group, Government will be at liberty to withdraw the grant altogether."

But if, on the other hand, the object of pressing this amendment is to give ample powers to the Government to do away unjustifiably with the allowance, then of course I will appreciate the reason why the Hon'ble Member will not withdraw this amendment. I shall put the Hon'ble Member's sincerity to the test and let us see what he says.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I feel that the Government of Bengal have at long last lowered their flag before the pressure of public opinion, and I might say the pressure of many of the Britishers in this country. Sir, the cry has been going on for some time from a section of the Britishers in this country that the attitude of Government towards the detenus is not as what it should be. They think that the favour that is bestowed on the detenus by the grant of allowance is quite unnecessary. Hitherto the Government have resisted that pressure, and they have stood by the principle that it is not fair and it is not just to detain a person without trial. That is the basic idea behind this provision of an allowance for a detenu or his family. This has been the tradition of the British up to this time. In other

lands under other Governments people have been detained and detained indefinitely without trial, but never this principle has been accepted by the British Government in any part of the British Empire. This feeling has prompted the Government, while they were doing an unpleasant task under the stress of necessity, to detain certain people whom they are not prepared to treat as convicts but whose detention according to them has become indispensible by making a compromise, that is by considering them as innocent people, but whose detention has become necessary in the interests of the State and for whom Government had to make a provision as they were debarred from earning their livelihood or contributing towards the maintenance of their family. That attitude of Government reconciled many people of this country to this principle of detention. Minus this provision this principle of detention will find no support in any responsible quarter of this country. I know that under one of the existing Acts Government can detain persons without trial and without making any provision for their family, but in that case the period of detention is limited, and Government must release the persons, I believe within a period of two months. The same principle is followed in the course of ordinary administration when a person is arrested and released within a short time. That is a very salutary principle. Can the Government state the reason for their departing from this principle? Has there developed a new situation in the country that makes them come forward with a proposal to surrender that great principle, the freedom of a citizen to live his own life unless he transgresses any existing law? Under the existing Act, as well as under the provisions as suggested by the Select Committee, the Government of Bengal have ample freedom and they can regulate the allowance. As a matter of fact, they have been regulating this allowance. The complaint has been that the allowance has been inadequate. We have ventilated that grievance in this House on more than one occasion, but the reply has always been that their decision is final and they are not prepared to reopen the question or have it examined by a third party.

Mr. NARENDRA KUMAR BASU: I beg to oppose this amendment, but I must preface my remarks by saying that I do not agree with Mr. Shanti Shekhareswar Ray that in this case Mr. Reid has succumbed to the opinion of the European Group, because as far as we can judge from the report of the Select Committee, it has been signed by the leader of the European Group, Mr. Thompson, and neither has he put in any note of dissent, so that in this case there is no question of a pressure from the European Group. Of course, the members will find that there is a notice of an identical amendment by one member of the European Group. However, that is a matter of minor consideration. We have just been told by Mr. Reid that Government do not intend to cause hardship or do not intend to stop the family contribution where it

is necessary. If they do not, in my submission there is no ground at all for changing the existing section which the House will notice gives ample discretion to the Local Government. The section as it now stands is thus: the Local Government shall make to every person who is placed under restraint a monthly allowance for his support of such amount as is, in the opinion of the Local Government, adequate for the supply of his wants and shall also make to his family, if any, and to such of his near relatives, if any, as are in the opinion of the Local Government dependent on him for support, an allowance for the supply of their wants suitable, in the opinion of the Local Government, to their rank in life. The expression "in the opinion of the Local Government" is repeated only three times to emphasise that the whole matter rests in the discretion of the Local Government and in their unfettered opinion. Then, again, in the amended clause as it came out from the Select Committee it was stated "and shall also make to any members of his family or near relatives who are dependents on him for support such allowance towards their maintenance as may seem to the Local Government appropriate in all the circumstances of the case not exceeding such allowance as, in the opinion of the Local Government, such person would have been in a position to make." The only reason given by Mr. Reid was that he thought where a person had been contributing to a joint family, no allowance need be given. This, I submit, is the flimsiest reason that one has ever heard from a Government member. If one man was making contribution to a joint family, it could not possibly be said that all the members of the joint family were dependent for their support on his contribution. It is not a question of the intention of the Local Government. I was almost tempted to say that the floors of the Writers' Buildings or rather of the Cabinet Chamber were paved with good intentions. But that is another thing. We have got to see what is the natural effect of this amendment. I submit in the absence of any reason for this change—it was very seriously considered in the Select Committee I take it and a unanimous report followed—the House should accept the unanimous report of the Select Committee which represented all shades of opinion in this House including three or four officials of Government. I hope the House will not accept the amendment.

Mr. S. N. ROY: The whole object of this amendment is to give discretion to Government in certain cases to refuse to pay allowances and, as the Hon'ble Mr. Reid has explained, it is not the intention that any allowances that are now being paid should be reduced by reason of the discretionary power that the Council is being asked to bestow upon Government or that in dealing with future cases they should follow any other standards, than what they are now following. I may point out that the first part of the section remains quite unaltered, *i.e.*, so far as

the allowance to the detenu himself is concerned. There is no difference there. But as the section now stands, payment of an allowance to the family of the detenu who are dependent on him is obligatory. In actual fact the provision has been liberally interpreted and allowances have been granted to dependants of detenus who were not earning at the time of their arrest in certain cases. This has been done in hard cases. But there are instances of cases in which Government have made allowances to dependents, *e.g.*, mother, brothers, and the only response to it has been that these dependants have taken part in subversive activities. In a case of that nature Government wish to retain discretion not to pay any allowance. It is not correct as Mr. Syamaprosad Mookerjee has argued that Government can refuse to grant allowance.

Mr. SYAMAPROSAD MOOKERJEE: I did not say total refusal.

Mr. S. N. ROY: I think he suggested a nominal grant, but the words are "adequate for the supply of their wants." The only honest way in which Government can act in this matter is to say that in cases of the nature I have indicated they are not prepared to pay allowances. Therefore, they must have the discretion they ask for.

Babu Kishori Mohan Chaudhuri's motion was then put and lost.

The Hon'ble Mr. Reid's motion being put, a division was taken with the following result:—

AYES.

Afzal, Nawabzada Khwaja Mohammed, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Mr. Akhf.
Armstrong, Mr. W. L.
Ashworth, Mr. G. G.
Bai, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Chowdhury, Haji Badi Ahmed.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Dutt, Mr. G. S.
Edgley, Mr. H. G. A.
Faizulli, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fazan, Mr. L. R.
Ferguson, Mr. R. H.
Ghosh, the Hon'ble Sir Charu Chandra.
Ghuznavi, the Hon'ble Alhaji Sir Abdul Karim, of Dhaka.
Ghuznavi, Mr. R. H.
Gladding, Mr. D.
Guha, Mr. P. C.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hussain, Nawab Musharraf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Mr. Razzar Rahman.
Khan, Maulvi Tamizuddin.
Maguire, Mr. L. T.
Martin, Mr. A. M.
Miller, Mr. G. G.
Momin, Khan Bahadur Mohammad Abdul.
Mullick, Mr. Mukunda Behary.
Nag, Reverend G. A.
Nandy, Maharaja Srie Chandra, of Kasimbazar.
Norton, Mr. H. R.
Quasem, Maulvi Abul.
Raheem, Mr. A.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Ray, Babu Khetter Mohan.
Reid, the Hon'ble Mr. R. G.
Roy, the Hon'ble Sir Bijay Prasad Singh.
Roy, Babu Jitendra Nath.

Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Sulaiman, Maulvi Muhammad.
Steven, Mr. J. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deS.
Woodhead, the Hon'ble Mr. J. A.

NOES.

Bakshi, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Choudhuri, Babu Kishori Mohan.
Choudhury, Maulvi Nurul Absar.
Gupta, Mr. J. N.
Hakim, Maulvi Abdul.
Hoque, Kazi Emdadul.
Kasem, Maulvi Abul.
Maiti, Mr. R.
Mookerjee, Mr. Syamaprasad.
Roy, Mr. Shah Bokharewar.
Ray Choudhury, Babu Satish Chandra.
Rout, Babu Nagendra.
Roy Choudhuri, Babu Nem Chandra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.

"Ayes" being 62 and "Noes" 20, the motion was carried.

Mr. SYAMAPROSAD MOOKERJEE: I rise on a point of order, Sir. I want a ruling from you on the question as to whether it is open to a member of a Select Committee who has subscribed to one sort of opinion in the report of that committee, to go against that opinion or point of view in the open Council.

Mr. PRESIDENT: I do not see why one cannot change his opinion on the floor of the House. Fresh light may be thrown and fresh arguments advanced which may alter his opinion.

The motion that clause 19 as amended and clause 20 stand part of the Bill was then put and agreed to.

Clauses 21 and 22.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that clause 21 be omitted. This clause seeks to place all districts on the same footing. By the Suppression of Terrorist Outrages Act it was provided that Government would be cautious in applying the sections of this Act particularly the most drastic provisions, in the several districts. That caution is taken away now, and it is sought to apply the most drastic provision that is contained in Chapter III of that Act to all the districts all at once. This is doing hardly any justice to those districts which, according to Government, have behaved well, and placing good children and bad children all in the same category; all are going to be dealt with in the same manner. I do not see the importance or the urgency of this provision at all. Government can bring to operation at short notice all the provisions of the Act wherever they like and

there cannot be any hurry in the matter, nor can there be any reasonableness in applying all these provisions at once to all the districts. No reason has been given either in the Bill itself or anywhere else as to why that should be so unless it is argued that every part and parcel of Bengal is in a terroristic ferment and the immediate application of this law is therefore desirable. Even in that case, Sir, this clause might have been omitted from the Bill and its purpose might have been served by an executive order. So I propose the deletion of this clause.

The Hon'ble Mr. R. N. REID: I am afraid, Sir, I am unable to follow the last speaker in his argument to the effect that the whole of Bengal must be in a terroristic ferment in order to make it reasonable that Chapter III as well as Chapter II of the Terrorist Outrages Bill should apply to the whole of Bengal. What he proposes to do is to omit the words—I take it the words refer to sub-section 2 of section 1 of the Suppression of Terrorist Outrages Act. Chapter III refers to the possession of certain literature which is explained in this chapter as covering certain prescribed books, newspapers, and other documents and also certain other species of literature which are of a subversive tendency. There is no necessity whatever for the whole of Bengal to be in a state of terroristic ferment for it to be possible for literature of that kind to be in circulation. So I cannot see any reason why this House should accept this amendment. I beg to oppose the amendment, Sir.

The motion was put and lost.

The motion that clauses 21 and 22 stand part of the Bill was then put and agreed to.

Clauses 23 and 24.

Mr. P. BANERJI: I beg to move that clause 23 be omitted.

In this clause, Sir, Government is being given unrestricted power of interfering with the rights of property of persons. It is not necessary for the purpose of this clause that association should have to be prohibited. For, if the District Magistrate wants he can prohibit the use of any place he likes even for the purpose of healthy sports, gymnasium, *akhras*, or anything else. It has been said in sub-section 2 that any "place" includes a house or building or part thereof or a tent or vessel. Sir, the District Magistrate can direct the taking possession of places used for such a purpose. The Hon'ble Member is not aware of the fact perhaps that even in the absence of such a clause houses can be taken possession of and as a matter of fact we know of instances when places have been taken possession of in different parts of Bengal. We know also that schools have been taken possession of

by the police where they are now sitting and have turned out all the students as well as the teachers that lived in the school compound. We have also noticed that houses have been occupied and taken possession of by the police. It is provided that reasonable facilities will be given to remove the properties, etc. But this is simply absurd, and it is not at all possible. We know that in the Sutahati thana of Midnapore, there were cases of possession of houses by the police. Sir, we have seen that not only movables have been taken away but houses were taken possession of there. In many cases, it was very difficult for the inmates being removed without being molested by the police. Sir, it has been provided that Government are prepared to give reasonable facilities for removing women and children when taking possession of a house, and that reasonable facilities will also be given for removing movable properties in the house, provided that these movables are not liable to forfeiture. But, Sir, it is very difficult to do so, however, well-intentioned the Hon'ble Member in charge of this Bill may be. Sir, in the application of this law, it has been found that not a single movable property is allowed to be taken away. Sir, it depends on the sweet will of the District Magistrate, and if in the opinion of the District Magistrate the owner is entitled to remove such properties it will be found that in 99 cases out of a hundred this will not be the case. Even when a person is entitled to remove his properties, he finds that after the house has been taken possession of, there is nothing left by the police to be removed. We have seen during the last movement that many constables took away movables from such houses and if an inquiry is made, it will be seen that many such articles, including even musical instruments like harmoniums and *tablas*, are now lying in the houses of these constables in Bihar.

(The member having reached the time-limit, resumed his seat.)

Mr. NARENDRA KUMAR BASU: Sir, I beg to move that in clause 23, proposed section 11B be omitted.

The House will see that under section 11B, power is taken to take possession of places used for the purpose of certain associations, and it is said that if, in the opinion of the District Magistrate, that any place has been used in contravention of an order published under section 11A, the District Magistrate or any officer authorised in this behalf in writing by the District Magistrate, may take possession of such place and evict therefrom, and so forth. In the previous clause 11A, "the District Magistrate may prohibit the use of such place for such purposes" by an association which is objectionable. If that is done—and a breach of any order under that section is punishable under the law—I do not see any reason why the District Magistrate should have the power to take possession of the house also. The necessity for this clause does not seem to me to be very apparent. It seems

to me that it will cause unnecessary hardship, and it will also be a source of great oppression and terrorism to the people by the police. Sir, as the House would have seen, there is not even a provision for compensation to the person to whom this law applies. The House will also see that it does not matter to whom the house belongs. Supposing it belongs to an absentee owner and has been used with or without his permission by a tenant at the place for the purpose of an association, I submit there is absolutely no reason why the owner should be penalised in this fashion. Taking possession of the house may be availed of where the house is the property of an association. In that case, it can very well be understood that the Government would take power to take possession of the house. But why and for what reason it would be permissible to the District Magistrate to take possession of a house which has at one time been used for the purpose of an association and the members frequenting that place have been all warned by the District Magistrate, does not seem at all clear to me. I, therefore, move that clause 11B be omitted.

Mr. P. BANERJI: On a point of order, Sir. You ruled that a mover of a motion would be entitled to speak for ten minutes. But I was given only five minutes. I would like to know whether you have changed your ruling.

Mr. PRESIDENT: I understand that it was done by mistake, but as you did not protest I thought that you did not want to pursue the debate. If you had indicated your wish to prolong your speech, when the Assistant Secretary rang the bell, I might have given you more time. I have no doubt cut down the time-limit as an emergency measure, but if an important matter is before the House and I feel that a speech on its own merits should be allowed to be continued, I shall always relax the stringency of my order. But you never made any gesture that you wanted to speak on.

The Hon'ble Mr. R. N. REID: The first amendment of which we are talking just now is that clause 23 be omitted. I do not want to take up the time of the House in reiterating the arguments at length which I gave when I introduced this Bill and when I spoke about the necessity for this clause. The point was that it was known that places were used very often ostensibly by perfectly harmless associations for physical culture, etc., but that was a cloak for other dangerous purposes as they formed centres where the agents of terrorist conspiracies were engaged in recruiting young people to their ranks. It was thought that by this simple process—and it is not a very elaborate process—it might be possible to check these associations in their early stages and prevent young men being thrown into the terrorist net. That is the

real justification for this clause and it is not, as Mr. Basu suggested, intended to use this engine in order to put an end to the rights of private property.

Mr. Basu made a point when he was speaking on the amendment for the deletion of clause 11B that the District Magistrate has the power to prohibit the use of such a place, and that he suggested, as I understood it, that his actions should stop there, and that he should not be permitted to proceed to the next step provided by clause 11B of taking possession of such places. That is all very well. You can, under the Suppression of Terrorist Outrages Act, punish a person for violating a prohibition such as this, as provided for in clause 11A, but that would not serve the purpose. The owner of the place might continue to allow the place to be used for purposes which we are anxious should not be used for. He might go to prison, but the thing might still go on and what we are anxious to prevent is the use of such places for such wrongful purposes. It is for that reason that a clause has been put in allowing further steps to be taken. Supposing that the order of prohibition to use the place is violated, further steps should be taken to take possession of the place so that it may not be used for purposes for which they are endeavouring to use it.

Mr. P. Banerji's motion was put and lost.

Mr. Narendra Kumar Basu's motion was put and lost.

Kazi EMDADUL HOQUE: Sir, I beg to move that in clause 23 in proposed section 11A (*1*), line 1, for the words "of opinion," the words "satisfied by an inquiry made by him in this behalf" be substituted.

Sir, clause 23, proposed section 11A says "if the District Magistrate is of opinion that any place is being used for the purposes of an association which encourages or aids persons to commit acts of violence or intimidation, he may, by order in writing, published in such manner as he thinks best adapted for informing the persons concerned, prohibit the use of such place for such purposes." Sir, I should like to know in this connection how a District Magistrate has to form his opinion in this matter. Is it not a fact that his opinion is generally based on the reports of the police which are perverse, distorted and false. That being so, you can, well understand, Sir, that there will be no end of the miseries of the people at large in the absence of the safeguard I have proposed. We know, Sir, of what sterling character the constabulary and other myrmidons of the law are made. It is known, Sir, that they never discharge their duties properly. If they could do so, there would have been some check in dacoities, thefts and murders. But we find quite the reverse. What, however, they do is this. That when there is an instance of theft or dacoity, they go to the place of occurrence, let off the real culprits and harass innocent persons

to extort bribe from them and fabricate all sorts of false reports. In such cases their only object is to extort money from all persons concerned. So, Sir, if the District Magistrate has to form an opinion on the reports of such officers surely, Sir, the lives of many families will become simply intolerable. The District Magistrates however are responsible officers of Government. So if a District Magistrate himself makes an inquiry into the matter first and then if he is satisfied that a particular place is actually being used by certain of those who are members of the terrorist movement, then of course he would be justified in prohibiting the use of such place in that particular way. We have confidence in the District Magistrate and we know they will not distort facts and as they are considerate men, they will not misuse their powers. So I think the sort of procedure I have suggested can with advantage be inserted in the clause and with this point of view I have moved my amendment. This will simply improve matters.

The Hon'ble Mr. R. N. REID: If the District Magistrate is a considerate man which the last speaker acknowledged to be possible, and I am very glad to see that he did, I am afraid there is little to be gained by the alteration proposed I submit that the words "is of opinion" do connote that some previous inquiry must be taken before such and such place be taken possession of or its use prohibited. He is never likely to act without due inquiry on which he will form an opinion. I think this amendment is unnecessary. I beg to oppose the amendment.

The motion was put and lost.

Mr. PRESIDENT: Kazi Emdadul Hoque, could you move 202, 207 and 209 together and make one speech? That will save time.

Kazi EMDADUL HOQUE: But they are different matters.

Maulvi SYED MAJID BAKSH: In that case, what will be his time-limit?

Mr. PRESIDENT: Let him speak for himself. His time-limit of course will be what I have already prescribed. If more time is really needed I will see what extra time I may reasonably allow him.

Kazi EMDADUL HOQUE: I want to move 202 and 207.

Mr. PRESIDENT: Can you also move 209 and make one speech?

Kazi EMDADUL HOQUE: I have not made up my mind, but I shall move 207, but will you please permit me to move 202 in a somewhat modified form? Government is not prepared to accept my motion 202 in its present form, but they are prepared to accept it in an amended form.

Mr. PRESIDENT: Is that by arrangement?

Kazi EMDADUL HOQUE: Yes, Sir. I beg to move that in clause 23 after the proviso to sub-section (*1*) of proposed section 11B the following proviso be added, namely:—

"Provided also that if such place is regularly used for the purposes of worship or religious observances reasonable facilities shall be afforded for the continued use of such place for such purposes."

The Hon'ble Mr. R. N. REID: I am prepared to accept the amendment in the modified form.

The motion was put and agreed to.

Mr. NARENDRA KUMAR BASU: I would like to move my motion also in the amended form. I beg to move that in clause 23 after sub-section (*2*) of proposed section 11B the following sub-section be inserted, namely:—

"(*2a*) Where possession of any place has been taken under sub-section (*1*), the District Magistrate, on the application of any person who has suffered loss thereby, shall, if such person, in the opinion of the District Magistrate, has not used such place for the purposes of, and has no connection with, any association of the nature described in sub-section (*1*) of section 11A, award to such person, such reasonable compensation as the District Magistrate thinks proper."

The Hon'ble Mr. R. N. REID: I am prepared to accept that amendment in the amended form.

The motion was put and agreed to.

Kazi EMDADUL HOQUE: I beg formally to move that in clause 23 in proposed section 11C, line 1, after the word "who," the words "without reasonable excuse" be inserted.

The Hon'ble Mr. R. N. REID: I beg, Sir, to formally oppose it.

The motion was put and lost.

Dr. AMULYA RATAN GHOSE: I beg formally to move that in clause 23, in proposed section 11C, last line, for the word "months," the word "weeks" be substituted.

The Hon'ble Mr. R. N. REID: I oppose the amendment formally.

The motion was put and lost.

The motion that clause 23 as amended and clause 24 stand part of the Bill was then put and agreed to.

Clause 24A.

The motion that clause 24A stand part of the Bill was put and agreed to.

Clause 25.

Mr. NARENDRA KUMAR BASU: I beg to move that clause 25 be omitted.

Whatever might have been the reasons for accepting clause 11 regarding the dictation of evidence by the Special Commissioners, I submit there is absolutely no reason either in law or in practice or any intention in any law for giving Special Magistrates this power of dictating evidence. As a matter of fact, we are not unfamiliar with the spectacle of Magistrates taking down evidence in a slipshod and haphazard manner, and if the power is given to the Special Magistrate, who is more often than not a Subordinate Magistrate, to dictate the evidence to a stenographer, typist or clerk, it will cause lots of inconvenience and injustice and I submit that——

The Hon'ble Mr. R. N. REID: If I may interrupt, I may say here that I am prepared to accept the motion.

The motion was put and agreed to.

Clause 26.

Mr. P. BANERJI: I beg to move that in clause 26, Chapter III (proposed sections 35, 36, 37, 38 and 39), be omitted.

Sir, it has been pointed out in this House that it is very difficult for persons to ascertain what books under the Sea Customs Act of 1878, the importation of which has been prohibited and also there is another clause 36, an all embracing clause, under which there is penalty for possessing documents, books, or newspapers which contain incitement or encouragement to commission of certain offences. In this case it will be vary difficult for people to ascertain which books contain incitement or encouragement to the commission of certain offences according to the ideas of Government. In all libraries it is found that there are so many thousands of books that persons, the educationists, keep books of different histories of the world which contain many things and there also many books which have never been seen by these readers; still for the purposes of the public these books are kept. In this case if a library contains books like these, what will happen? The person who keeps that library will be punished although he has no intention whatsoever either to incite or encourage certain offences which might lead to his punishment according to the estimation of the Government. Take for instance the history of England which contains something like this—that when a king was unfit he was beheaded. Will in that case the Government think that the person who possesses this kind of book will incite or encourage violence. Then take the case of the book "Royal Reader," or similar other books which for instance contain the story of William Tell. By reading it the moral that one derives is that no one should bend

his knee to any person but to God alone. The moral that the students learn from it may also be thought objectionable, and I do not think that for the purpose of this section such moral stories can be allowed to be read by young persons. It is possible for the Government to construe from any passage from any book that it would incite violence and they may haul up the possessor of such a book. Therefore, I say it is an all embracing clause and should be deleted.

Mr. SHANTI SHEKHARESWAR RAY: I beg to move that in clause 26, proposed section 35 be omitted.

Sir, now that the Government have gained their object, I would ask them to be magnanimous. Sir, reading through the Bill I feel that the real object of the Government was to get clauses 13 and 19 passed. They have achieved that in their own way. The rest of it, and particularly this section, are more or less a show of the mailed fist. There is more of thunder there than anything really very objectionable. But, Sir, even as the clause stands, it is objectionable. I know that in a subsequent clause, that is in clause 38, there is an attempt to take away the objectionable feature of the provision contained in section 35. But still, Sir, the fact remains that you are giving too much power to the District Magistrate and to the Local Government in this matter. The net effect will be that it will demoralise the people of Bengal, in this sense that the tendency in recent times has been that power has passed away from the hands of the District Magistrate and that of the Local Government to the hands of the leader of the people and the people themselves. Here is an attempt, an indirect attempt, an insidious attempt on the part of the bureaucracy to regain that power, here is an attempt to force the people to realise that the District Magistrate or the man in charge of the department is the all powerful person. On his sweet will depends the liberty of the people. Well, what do we provide in section 35 when you say whoever has in his possession any newspaper, book or other document, copies of which have been declared to be forfeited to His Majesty under any law for the time being in force, shall be punishable with imprisonment which may extend to three years or with fine, or with both. To an average citizen it sounds very frightful. You may get anything objectionable through the post and you may be too busy to open the packet or the book post and it may be lying somewhere in your house or someone may plant an objectionable literature of the kind in your house and send word to the police and when the police discovers it, you are in for trouble. It is very difficult for an average citizen to provide himself against such a situation. It depends on the sweet will of the District Magistrate who is to discover the intention. I do not know how he is to come to that decision, but it depends upon his sweet will whether that man is to get away scot-free or be sentenced. If he is a privileged man,

he can get away, but if he is an objectionable person according to some officers of Government, he is to be hauled up and put to all sorts of inconveniences; he is not to get the ordinary privileges of the law courts. The onus of proof is to be sifted from the prosecutor on to the prosecuted person. This will be the net result of such provisions which are more in the nature of thunder than likely to serve any useful purpose except that of emasculating the people and lowering their stamina. The Government of Bengal has been so much engrossed with the problem of terrorism that they forget that there is something worse than terrorism and that is disaffection. Terrorism may be limited to certain persons, but disaffection and discontent may spread far and wide. By a measure of this nature you help to produce a feeling of discontent and disaffection not only against Government but also against those who support it. You also create a feeling of estrangement between the members of the Moslem and Hindu communities. That will be the net result of this measure. So I would like Government to reconsider this decision, to reconsider whether it is really worthwhile to press for the adoption of such a measure which cannot in any way be helpful. In this connection I would also ask the members of the British community and the representatives of the Moslem community here to reconsider their attitude. We know this measure is going to affect mainly the Hindu community of Bengal, because it is admitted that this measure is intended to deal with terrorism and for the time being it is confined to the Hindu community. So it is the members of the Hindu community only who will come under the hardships of this measure. In lending a support to this measure the members of the Moslem community or British community are simply creating a feeling of estrangement against them.

Dr. NARESH CHANDRA SEN GUPTA: This clause is one which I look upon with the utmost apprehension. I wish to point out the character of the clause. Under section 35 the possession of a book is in itself an offence without any circumstances of extenuation, and possession of which books—books the importation of which has been prohibited under the Sea Customs Act of 1878. I am sure there is no member of this House, except those official members who have to deal with this matter, who knows what books are prohibited under the Sea Customs Act. Nevertheless, the possession of such a book is an offence for which one can be punished with imprisonment for three years or five years without any question of intention or knowledge whatsoever. In the next section 36 the offence is punishable for possession of books of a particular character, provided that there is a loophole left for a person who proves that he had such newspapers, books or other documents in his possession indicating that he did not

intend that it should be used for the purpose of inciting to or encouraging the commission of any offence referred to in clause (*a*). The burden is upon him to prove that he has no intention. Well, nevertheless that provides a safeguard. If the unfortunate possessor of a book can prove to the satisfaction of the Magistrate—it is very difficult to prove this—that although he has possession of such a book he had no such intention, well, he gets off. In section 38 a further safeguard has been provided and the manner in which it is provided is ominous. The manner of it shows what we have to look for. It says:—

"No complaint shall be made under sub-section (*1*) unless the Local Government or the District Magistrates as the case may be is satisfied that the newspaper, book or other document in respect of which the offence is alleged to have been committed contains words, signs or visible representations which tend to further or encourage the terrorist movement or the commission of any offence in connection with that movement, and is of opinion that the person alleged to have committed the offence intended that the newspaper, book or other document should be used for the purpose of inciting to or encouraging the commission of an offence in connection with that movement and certain other things."

Well, Sir, if that is the object of Government, *i.e.*, not to punish anybody for possession of a book unless that book was directed towards the furtherance of a terrorist offence, what is there to prevent their introduction of that clause in section 35 or section 36? If they had introduced that clause there, they would have given the court power to investigate whether that book is likely to promote the commission of an offence of a terroristic nature or other things, which are provided there. Why should the court be debarred from investigating that question? The idea is that it is the District Magistrate who should investigate that question.

The Hon'ble Mr. R. N. REID: But not under section 135.

Dr. NARESH CHANDRA SEN GUPTA: Section 38 (*1*) says that no court shall take cognizance of an offence punishable under section 35 or section 36 unless the District Magistrate complains and the District Magistrate will not complain unless he is satisfied that the book is offensive in this way. Therefore, it is for the District Magistrate to be satisfied that the book is of the character which is specified in sub-section 2 of section 38, but why should it be the District Magistrate? If that is the real thing you want to be punished, why should you not come to the court? Why should this safeguard be provided in sections 35 and 36? There is absolutely no reason whatsoever why the District Magistrate or the Local Government is to be satisfied

and once they are satisfied of that they would give sanction; but then it is no longer open to the court to investigate that question at all. After that, when the matter comes before the court, as soon as the court finds that the importation of the book has been prohibited under the Sea Customs Act although the possessor of the book may have no knowledge of the prohibition, yet the court must convict him and pass sentence under section 36. If the District Magistrate had made the complaint, then the court is bound to convict unless his intention to use the book for any of these purposes are not terroristic purposes necessarily is established. That shows that if the Government have got good intentions they have dissembled it in such a manner as to rouse the strongest suspicion. That practically is tantamount to saying that Government is more afraid of books than of arms and bombs, and probably rightly; but, Sir, they should know that the ignorance which would be the result of keeping out the possession of books from people who want to read and who can profit by reading them is much worse than the injury which may be caused by the possession of books. Even a book like the "Works of Lænin" if properly studied is far less conducive to revolution in India than their ignorance, and the knowledge of the tenets of the Russian revolutionaries from third or fifth-hand sources.

Mr. SYAMAPROSAD MOOKERJEE: I rise to support the proposal that this clause be omitted. Sir, while referring to the Statement of Objects and Reasons accompanying the Bill as first circulated to the House, I find that the reasons given here by the Hon'ble Member are chiefly these: He refers to the circulation of terrorist literature to young and immature minds which he says forms a most important item in the *modus operandi* of the recruiting agents of the terrorist groups and he added that there had of late been a progressive increase in the circulation of such literature to make up for enforced inactivity in other directions.

That I take is the chief object of his including a drastic provision of the character as embodied in clause 26. I do not see, Sir, how the incorporation of a drastic provision like this will help in stopping the circulation of such literature. Because, so far as I know, in most cases such literature is circulated in the form of temporary pamphlets which are never intended to be kept in a permanent form, so that if such literature is circulated to young people or to other persons who may be affected thereby, they may be read by them and destroyed before there is any possibility of Government applying the provisions now proposed to be embodied under clause 26. This clause, Sir, refers to the possession of certain classes of books, newspapers and documents. In the first place it refers to books and documents, the importation of which is prohibited under the Sea Customs Act of 1878. From the

Council Library, Sir, I have secured a copy of the Sea Customs Act, which is so old and which has received so much attention from white ants, that it is almost impossible to exactly make out what its provisions are. I do not know, Sir, if the Hon'ble Mr. Reid himself knows its provisions, or perhaps he might have refreshed his memory in connection with the present discussion. But I shall not be wrong in saying there are very few of us who know the nature of documents which are covered by the Sea Customs Act. For instance, it refers to any book printed in infringement of any law in force in British India on the subject of copyright when the proprietor of such copyright or his agent has given to the Chief Customs Authority a notice in writing that such copyright subsists. Sir, I seriously ask how can books coming under this category be included in books calculated to spread the terrorist movement in this province? Then, Sir, there is a very broad clause, *viz.*, that any obscene books, pamphlet, paper drawing, painting, representation, figure or article will come under this clause. But, Sir, how is it possible for any ordinary person to know, or as a matter of fact how many members of this House know, as to what are the detailed books and pamphlets, which are prohibited under the Sea Customs Act? Now, Sir, this gives the possibility of misapplying a drastic provision of this description which will result in harassment of the people. I lay, Sir, considerable stress on this aspect of the matter. If you look at clause 36 you will find that there is one fundamental change here introduced. I remember, Sir, that when the Bill was originally introduced, the provision was merely that the possessor of any such book would be liable to be punished with imprisonment which may extend to three years or with fine or both. A certain change was made in the Select Committee, the change being that unless such possessor proved that he had such newspaper under circumstances indicating that he did not intend that it should be used for the purpose of inciting or encouraging commission of an offence, he would not be punished under this provision. But here, Sir, I submit it is fundamentally wrong. I think the position should rather have been reversed. If Government want to proceed under this section, it must have proof beforehand that the individuals who possess the books possess them with the avowed object of using them for committing a crime or for the specific purpose of spreading terrorist propaganda. As has been already pointed out by my friends before me, a section like this would be bound to be misapplied to a various number of people, who are absolutely innocent of the terrorist movement, and the result would be that this movement would spread further and further. It will really be indirectly helping in the growth of the terrorist movement in this province. I am not referring to that clause just now, but I do feel disappointed at the fact that whatever little change was made in the Select Committee has been attempted to be whittled down by Mr. Reid by his amendment moved on the floor of the House. That shows, Sir, the mentality

of Government. It was said by Mr. Reid when the Bill was referred to the Select Committee, which according to him was representative of different groups in this House, that it would be given ample opportunity of revising the measure. The Select Committee has done some good by doing away with some of the evil provisions of the Bill, but attempts are now made on the floor of the House by the spokesman on behalf of Government to whittle them down.

Mr. NARENDRA KUMAR BASU: Sir, this is one of the most important provisions in the Bill as I said when the Bill was before the Select Committee. This is one of the provisions which affects every book-lover in the province and persons, who are in the habit of reading books and keeping books. As a matter of fact, the provision of this clause which is divided into several sections hits everyone who possesses a library or who is the keeper of a library. For example, the first man to be hit by this clause would be the keeper of the Imperial Library. I do not know whether it is the intention of the Government that if there is found by some mistake in the Imperial Library a copy of a book; the importation of which has been prohibited under the Sea Customs Act—whether it is the intention of the Government to proceed against the Imperial Librarian. It may not be; I can quite see that that would not be the intention of the Government. But that does not matter, because an offence punishable under section 35 is cognizable, and therefore it lies in the sweet will of a policeman to harass poor Mr. Ashedulla. A policeman can very well go and search over the whole of the Imperial Library to find out whether there is a book in the Imperial Library the importation of which has been prohibited under the Sea Customs Act and then when the matter comes up to Government for sanction, I take it that Mr. Reid will refuse sanction. But, Sir, the mischief is there, and that I submit is a typical example of what is likely to be done. Sir, there are people like Mr. Syamaprosad Mookerjee who has got one of the finest libraries in Calcutta and there are other humbler folk who have got humbler libraries. No one will be immune from the marauding raids of the policeman, if he is in the bad graces of the police. So far as the amendments are concerned that have been tabled, I shall deal with them when they come. I submit that even with the improvements made in the Select Committee this clause remains one of the great engines of oppression against people who have nothing to do with the terrorist movements and who can safely be said to be absolutely non-violent in their action, because most book-lovers or book-worms are non-violent and have nothing to do with terrorists or anarchists. Sir, I do not agree with one of the previous speakers that this has nothing to do with the Britishers or the Moslems. It may be that British tradesmen may not have much to fear because I do not think they have much time to read books. (A voice: "Neither the police officials.") Sir, I am not talking of

officials, but I am talking of non-officials some of whom read books and possess books. So far as the Moslem members of the Council are concerned and gentlemen outside the Council, many of them are book-lovers. I submit that to expose them to unexpected visits by policemen in order to find out whether there were any objectionable books in their library, as this clause proposes to do, is an act of oppressing which ought not to be allowed. As I have stated—and I do not want to repeat it—the Local Government will probably not accord sanction to the prosecution if it were left to the Local Government, but the Bill gives power to District Magistrates in the *mufassal*. I am afraid many of the District Magistrates have very little idea of books and of literature other than the literature supplied by the police. If one were to be harassed and subjected to the indignity of a search of his library under the provisions of this clause, I submit that it would not only be unfair but unnecessary, and unnecessarily harassing and it will never be able to stamp out terrorism.

The Hon'ble Mr. R. N. REID: Sir, I admit that this clause is of a a drastic nature, and I also admit that it is easy to build on this clause arguments to the effect that it can easily be used as an engine of oppression and so on. It is easy even to build upon it the *reductio ad absurdum* which Mr. N. K. Basu so cleverly put before the House of the police ransacking the Imperial Library. But, Sir, the reason underlying the drafting of this particular clause is one which deserves very serious consideration, and it is a reason which Government thought was sufficiently cogent to impel them to bring in this particular clause dealing with seditious literature. The object which the Government have in veiw is to try to check the dissemination of pernicious literature among those whom it will hurt. There is plenty of literature which will not harm grown-up persons like ourselves, but the same literature can be used to prevent the minds of those whose opinions are not yet fully formed, and who are open to influences, good or bad. There are plenty of persons unfortunately in the world who are ready to pervert easily influenced minds in the wrong direction, and it is felt that it is possible that by means of this clause some check may be applied to the supply of such pernicious literature among young persons. I do not think I need go into a more detailed criticism of the various clauses which have been recently uttered except this that Mr. Syamaprosad Mookerjee mentioned the question of the kind of literature which may be prohibited under the Sea Customs Act and he mentioned only two cases by way of ridicule. He said that Government should maintain a list of books which had been proscribed under the Sea Customs Act and of books whose copyrights had been confiscated. Sir, there is certainly some difficulty in that connection and we shall go into it very carefully and see whether it is not possible—and I am speaking vaguely at present because I admit I have not gone into this particular

point not because it is new to me but because I have had no time—to draw up a list of literature which is to be regarded as undesirable and which will be dealt with under this clause, but beyond that I cannot say anything more precise, I am afraid. I oppose the amendment.

Khan Bahadur MUHAMMAD ABDUL MOMIN: May I ask one question, Sir, to make my position clear? Why is it necessary to have section 35 if you have section 36? Does not that cover every precaution that you want to have in this matter? I should like to know, in case you retain section 35, would you like to accept amendment No. 228 which is exactly on the same lines as the Hon'ble Mr. Reid's amendment No. 241 which is with reference to clause 36?

The Hon'ble Mr. R. N. REID: As regards the distinction between clauses 35 and 36, the purposes were to draw a distinction between literature which was definitely proscribed and therefore a decision has been come to as to its nature and that is section 35. Section 36 deals with literature of a different kind on which a decision has to be come to and which has not already been dealt with and proscribed.

Mr. P. Banerji's motion was then put and lost.

Mr. Shanti Shekhareswar Ray's motion being put, a division was taken with the following result:—

AYES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Bakish, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Khan Bahadur Maulvi Allimuzzaman.
Chaudhuri, Babu Kishori Mohan.
Chowdhury, Maulvi Abdul Ghani.
Choudhury, Maulvi Nurul Absar.
Eusufji, Maulvi Nur Rahman Khan.
Ghose, Dr. Amulya Ratan.
Gupta, Mr. J. N.
Noque, Kazi Emdadul.
Hossain, Maulvi Muhammad.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maiti, Mr. R.
Momin, Khan Bahadur Muhammad Abdul.
Mookerjee, Mr. Syamaprasad.
Quasem, Maulvi Abul.
Rahman, Maulvi Azizur.
Ray, Babu Amulyadhan.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Rout, Babu Nagendra.
Roy, Mr. Surat Kumar.
Roy Choudhuri, Babu Ram Chandra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.

NOES.

Ashworth, Mr. S. G.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Surat Chandra.
Barma, Rai Sahib Panchanan.
Birkmyre, Mr. H.
Bolderston, Mr. J. H.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Chowdhury, Haji Badi Ahmed.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. S. S.
Edgley, Mr. R. G. A.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ghosh, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhaj Nawab Bahadur Sir Abdulkarim, of Dhaka.
Gilchrist, Mr. R. N.
Gladding, Mr. S.
Guha, Mr. P. N.

Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Khan, Mr. Rezaur Rahman.
Maguire, Mr. L. T.
Martin, Mr. G. H.
Mitter, Mr. S. S.
Mullick, Mr. Mukunda Behary.
Nag, Reverend B. A.
Nizamuddin, the Hon'ble Mr Khwaja.
Norton, Mr. H. R.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Rizvi, Mr. S. S.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Steven, Mr. J. W. H.
Suhrawardy, Mr. H. S.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Wasiq, Mr. W. A. R.
Wilkinson, Mr. H. R.
Williams, Mr. [illegible].
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 31 and "Noes" 50, the motion was lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 26, in proposed section 35, line 1, after the word "whoever" the word "knowingly" be inserted.

This I want to do only to place the onus on the right shoulders. It is almost unthinkable that a person——

The Hon'ble Mr R. N. REID: I am prepared to accept that.

The motion was put and agreed to.

Mr. NARENDRA KUMAR BASU: I beg to move that in clause 26, in proposed section 35, after the word "shall" the following be inserted, namely:—

"unless he proves that he had such newspaper, book or other document in his possession under circumstances indicating that he did not intend that it should be used for the purpose of inciting to or encouraging the commission of any offence referred to in clause (*a*) of section 36."

By my amendment I want to bring section 35 in line with section 36. I do not see any reason why this safeguard should not be, if it is a safeguard at all, in section 35 also. It may be stated at once that so far as I am personally concerned I have tried to make the clause as much acceptable to Government as possible. In fact, I am doing something which, left to myself, I would not probably have done, namely, to cast the onus to be upon the accused person. But I thought I would see whether the Government which has accepted that recommendation for cases under clause 36 would not accept it for acts under section 35, and what objection the Government can possibly have to give the same protection, if it may be called so, to cases of owners of books which contravene section 35?

The Hon'ble Mr. R. N. REID: The point is to my mind that clause 35 is dealing with documents, newspapers and books which are proscribed; that is to say, that the possession of them is an offence already. What is the point of giving a loophole for the possession of newspapers, etc.——

Mr. NARENDRA KUMAR BASU: That is already punishable under another clause in this Act.

The Hon'ble Mr. R. N. REID: And also having accepted the word "knowingly" in an amendment which we already accepted. That goes a great way towards meeting Mr. Basu's wishes.

The motion being put, a division was taken with the following result:—

AYES.

Bakth, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Choudhuri, Khan Bahadur Maulvi Allimuzzaman.
Choudhuri, Babu Kishori Mohan.
Choudhury, Haji Badi Ahmed.
Choudhury, Maulvi Nurul Absar.
Kasemji, Maulvi Nur Rahman Khan.
Ghosh, Dr. Amulya Ratan.
Gupta, Mr. J. N.
Hoque, Kazi Emdadul.
Hossain, Maulvi Muhammad.
Khan, Khan Bahadur Maulvi Nizamat Ali.
Khan, Maulvi Tamizuddin.
Maiti, Mr. R.
Momin, Khan Bahadur Muhammad Abdul.
Mookherjee, Mr. Syamaprosad.
Quasem, Maulvi Abul.
Ray, Mr. Khanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Rout, Babu Noconi.
Roy, Mr. Sarat Kumar.
Roy Choudhuri, Babu Nem Chandra.
Samad, Maulvi Abdur.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.
Suhrawardy, Mr. H. S.

NOES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Ashworth, Mr. G. H.
Bal, Babu Lalit Kumar.
Bal, Rai Sahib Sarat Chandra.
Birkmyre, Mr. H.
Bothamley, Mr. J. M.
Choudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Cohen, Mr. R. J.
Dale, Mr. C. R.
Das, Rai Bahadur Kamini Kumar.
Edgley, Mr. R. G. A.
Faruqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ghose, the Hon'ble Sir Charu Chunder.
Gazanavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdulkarim, of Dhaka.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Mr. P. N.
Hogg, Mr. G. P.
Hussain, Nawab Musharraf, Khan Bahadur.
Jalaluddin, Maulvi Muhammad.
Khan, Mr. Nasser Ali Khan.
Maguire, Mr. L. T.
Martin, Mr. S. M.
Miller, Mr. S. C.
Mullick, Mr. Mukunda Behary.
Nag, Reverend S. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Norton, Mr. H. R.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur.
Ray, Babu Khetter Mohan.
Reid, the Hon'ble Mr. R. N.
Ross, Mr. J. R.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. S. N.
Shahana, Babu Satya Kinkar.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Steven, Mr. J. W. R.
Thompson, Mr. W. H.
Townend, Mr. H. R. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. Gill.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 28 and "Noes" 47, the motion was lost.

Babu KISHORI MOHAN CHAUDHURI: I beg to move that in clause 26, in proposed section 35, line 10, for the words "three years" the words "six months" be substituted.

This is a simple matter, and I propose to move that the punishment for six months is quite sufficient, and I think there may not be serious objection to accept it. I therefore move my amendment.

The Hon'ble Mr. R. N. REID: I think the best answer to the mover of this amendment is that we accepted the word "knowingly" which makes considerable difference in the sense. At the same time it is a serious offence to be in possession of a proscribed literature, and I do not see any reason to reduce the maximum penalty below three years.

Dr. AMULYA RATAN GHOSE: I beg to move that in clause 26, in proposed section 35, line 10, for the word "years" the word "months" be substituted.

I hope the Hon'ble Member will accept this.

The Hon'ble Mr. R. N. REID: I am of opinion that there is a great difference, as the mover wishes to reduce the punishment by half. I therefore oppose it.

Babu Kishori Mohan Chaudhuri's motion was then put and lost.

Dr. Amulya Ratan Ghose's motion was then put and lost.

Mr. SHANTI SHEKHARESWAR RAY: I beg formally to move that in clause 26, proposed section 36 be omitted.

The Hon'ble Mr. R. N. REID: I equally formally oppose the amendment.

The motion was put and lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 26, in proposed section 36, line 1, after the word "whoever" the word "knowingly" be inserted. I hope the Hon'ble Member will accept it.

The Hon'ble Mr. R. N. REID: I cannot accept this amendment; it is on a different footing. Therefore I oppose it.

The motion was put and lost.

Dr. AMULYA RATAN GHOSE: I beg to move that in clause 26, in proposed section 36, line 8, the words "signs or visible representations" be omitted.

Mr. PRESIDENT: Are you going to move 239 as well and make one speech?

Dr. AMULYA RATAN GHOSE: Yes, Sir. But I think the amendment No. 239 is somewhat different.

Mr. PRESIDENT: That does not matter much. You can make one speech and thus save the time of the House. I shall put them separately.

Dr. AMULYA RATAN GHOSE: I beg also to move that in clause 26 proposed section 36 (*b*) be omitted.

The first amendment deals with a matter which is somewhat vague. I do not understand how the newspaper, the document, can have signs or visible representations which may encourage terrorism or which may encourage anarchical movement in the country. Mere writing of words does not always make it possible to incite terrorism, but, Sir, how shall those who know writing and reading shall make signs and visible representations. Of course, I do not understand the exact implication of visible representation and what is meant by visible representations in a document or a book which may so much aggravate the feelings of the tender-aged boys as to take them to terrorism. This seems that Government is somewhat over-anxious in drafting it in such a manner that no loophole is left. That is probably the reason which led Government or the Hon'ble Member to include these words in this clause. It may cause immense hardship to persons whom under the powers of this Act, Government might prosecute. Then as regards the second amendment, I really cannot understand what is meant by signs or visible representation. I have already said I do not understand the implication of the word "signs or visible representation." But taking for granted there are signs and visible representations, I cannot imagine how could those things tend to incite or tend to encourage the commission of any offence. There is too much of a linguistic exercise in this matter, and I do not know whether the courts or lawyers or ordinary ignorant public will be able to follow these words and the exact meaning and implications of these words. I do not know whether those signs or visible representations will be issued from the Blind School. I cannot understand how signs or visible representations can tend people to take to terrorism. This is so much hypothetical and imaginary that we cannot follow the philosophy of a proposal like this.

As regards clause 26 regarding section 36 (*b*) I have proposed that the clause be omitted. This is also a thing which is absolutely dependent upon the kind of things which the previous sub-clause 36 (*a*) has laid down. Therefore, I think this sort of wording and language which is ununderstandable should not be there and the clause should be omitted.

The Hon'ble Mr. R. N. REID: I think it a little hard to suggest that a surgical operation should be necessary to clear up Dr. Ghose's doubts. I hoped I could explain in a few words and what I intended to say is simply this. Where the clause speaks of signs or visible representations, a single instance will be the use of pictures of an inflammatory nature which are only too common with the revolutionary pamphlets and literature which we are trying to deal with or again the photographs of persons, for instance, the photographs of persons who had been killed in the Chittagong Armoury Raid Case. That is the sort of thing which we are thinking of. That is Dr. Ghose's first amendment.

The second amendment relates to the words "or tend to incite to or to encourage" which he had considerable difficulty in understanding. I submit, Sir, that to most persons these words are pretty clear, and beyond that I cannot suggest that they mean anything more than their dictionary meaning.

Thirdly, he has an amendment to omit clause 36 (*b*). There, again, I must join issue with him, and I do think that those words are very necessary because as they stand they simply mean that they are intended to endeavour to prevent the broadcasting of everything which directly or indirectly express approval or admiration of any such offence as are enumerated in the previous section, and the whole purpose of the clause is to prevent publication of literature which will encourage the commission of those offences. I wish I could elucidate more clearly, but I do hope that I have been able to make it clear to the mover. I oppose these amendments.

The two motions of Dr. Amulya Ratan Ghose were then put and lost.

Maulvi ABUL QUASEM: On a point of information, Sir. We were summoned to sit to-day from 10-30 a.m. to 1-30 p.m. But now as it is past 1-30, may I inquire how long we are to sit?

Mr. PRESIDENT: Till 2 p.m.

The Hon'ble Mr. R. N. REID: I beg to move that in clause 26 for the last part of proposed section 36 beginning with the words "shall, unless he proves," the following be substituted, namely:—

"shall, unless he proves that he had such newspaper, book or document in his possession—

(*i*) in circumstances indicating that he did not intend that it should, and did not know that it could, be used for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement; or

(ii) for the purposes of *bona fide* research or study not connected with the furtherance or encouragement of the terrorist movement,

be punishable with imprisonment which may extend to three years or with fine, or with both."

This amendment refers to the latter part of clause 36. The Select Committee put in the whole of the latter part of that clause, for the purpose of safeguarding the interests of innocent persons who might come in possession of objectionable literature without any sort of motive for using it for wrong purposes and that quite innocently. When it came afterwards to be considered by Government, they felt that the words as drafted did not quite meet the purposes they had in their mind. What we are aiming at in this clause is to try and check the dissemination of pernicious literature among young men who might be led into bad ways. We are trying to prevent the corruption of youths by means of revolutionary literature, and the dissemination of revolutionary literature is, as experience shows, the first step which the terrorist recruiter takes in order to gain young boys over to his side. This early stage is not one at which the recruiter definitely incites the persons to whom he distributes his literature to commit a specific crime of murder, but he is laying the first seeds which will ultimately blossom out into the evil fruit which he is anxious to see brought into being. Therefore, it was thought that one had to go a bit further back so as to try and prevent the early stage before really the question of committing all those offences could be expected to enter into the minds of those youths to whom revolutionary literature was being distributed. I beg the Council, in connection with this particular clause which, as I said before, is drastic, to consider very earnestly and carefully the purpose for which it is drafted, that is, to try and check recruiting at the early stage, because once the young and susceptible boys are drawn into this movement, it is, as experience has shown, extraordinarily difficult to get them out of it again. What the clause aims at is to stop what one might call the systematic purveying of pernicious literature with the sole object of gaining recruits to the terrorist movement, not to be used immediately for any evil purpose, but to be there and to be available eventually when the terrorist leaders require them to do those deeds of which we have had so much experience during the last four years. That is the general purpose of the clause, and it is on that basis that I have moved this amendment to the clause as modified by the Select Committee.

Babu JATINDRA NATH BASU: The Select Committee have inserted a provision which safeguards the person who happens to be in possession of certain kinds of literature, but if he succeeds in proving

that he has such possession under circumstances which show that he did not intend that it should be used for the purpose of inciting or encouraging the commission of any offence, he should not be affected. Mr. Reid's amendment adds to that provision an additional provision which is that he should not only show that he was in possession under circumstances indicating that it was not intended to be used for those purposes, but that he did not know that it could be so used. The difficulty is there. It might touch a large number of innocent persons. In these days it is usual for quite a large number of innocent persons to receive every day an amount of literature which it is not possible for them to examine or look through. In many cases they throw them on the side shelf or into the waste paper basket, and it may so happen that some little children of the house may take possession of them from the shelf or the waste paper basket and accumulate them. Now, under the provision that Mr. Reid desires to introduce, a possessor of such literature, that is to say, the man who receives this kind of literature has not only to prove that he was in possession of the literature under circumstances which will show that he never intended that it should be used for a particular purpose, but also that he did not know that it could be so used. Even if there were 48 hours instead of 24 every day, even then a person receiving literature cannot have knowledge of all the literature that he receives in the ordinary course. It is quite possible for the prosecutor to urge that he should have known; but unfortunately there are members in this Council who cannot afford time to read even the daily newspapers but who receive an amount of literature not only from India but from other parts of the world which it is impossible for them to go through. Now, Mr. Reid's amendment, if passed, will penalise even them. This provision, therefore, is capable of being misconstrued and misapplied, and so I oppose it.

Mr. NARENDRA KUMAR BASU: I am sorry I shall have to begin by saying that I consider the proposal to make these changes in the clause as drafted by the Select Committee is due either to dishonesty or to extreme foolishness. There are no other alternatives. Mr. J. N. Basu has drawn attention to the words "and did not know that it could" in sub-clause (*1*). I submit, Sir, that sub-clause (*2*), viz., "for the purpose of *bona fide* research or study not connected with the furtherance or encouragement of the terrorist movement" is equally bad. When this clause was settled in the Select Committee, the Select Committee thought that they were putting it in order to safeguard the interest of the accused persons as well as to safeguard the interest of the Government. The Government professes to strike at those who in the words of the Hon'ble Member take to systematic spreading of pernicious literature to the young. But does the Government think that their myrmidons and their officers will restrict themselves to such cases? Should not, Sir, legislation be fool-proof, that is to say,

police-proof; that is to say, Home-Department proof? I submit, Sir, that if these words are allowed to remain, nobody in this country will be safe. What is the value of this clause and of "did not know that it could?" That means that the only defence that can avail a man charged under this section is illiteracy, because if a man has a book in a language which he can read and which comes under the provisions of this clause, how can such a man know that it could not be used for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement? It is impossible; it takes away the whole clause altogether. I submit, Sir, if it is intentionally done then it is dishonest, but if it is done unintentionally, then it is extremely foolish.

Then, Sir, take the second clause "for the purposes of *bona fide* research or study not connected with the furtherance or encouragement of the terrorist movement." But a study in order to counteract the terrorist movement: that also is a study connected with the furtherance or encouragement of the terrorist movement. When a man has a certain number of books for study just to see how these things are being done and to try and stop the terrorist movement: that also is a study which is connected with the furtherance or encouragement of the terrorist movement. For the moment if I were allowed to give my own personal experience, I may say that at the present moment by the courtesy of a high police officer, I am in possession of certain books, which come under the mischief of this clause. He has lent those books to me for the purpose of seeing what sort of literature is being circulated to the young. I have carefully read Mr. Reid's (*i*) and (*ii*) and I find that I come under both, because it is impossible for me to prove and it would not be true for me to say that on reading the books I did not know that they could be used for the purpose of disseminating such doctrines. So I am hit by both these clauses. But what is the remedy? Is this the sort of remedy, the quack remedy, that Mr. Reid gets up solemnly in this House and asks us to accept? As I have said, Sir, their object is to see that pernicious literature is not circulated to the young, but what I say is that this clause is drafted in such a way that it may be used as an engine of oppression against the innocent, and that should not be done. Not only has that been done, but he has tried to take away the entire effects of the safeguard proposed by the Select Committee. The Select Committee said that unless such person proves that he had such newspaper, book or other documents in his possession under circumstances indicating that he did not intend that it should be used for the purpose of inciting to or encouraging the commission of any offence referred to in clause (*a*) he would be punishable with imprisonment which may extend to three years or with fine or with both. I have given an illustration from my personal experience and I would certainly come under the provision even as drafted by the Select Committee, but if Mr. Reid's sweet voice

prevails over the members of this House and this amendment is accepted, then nobody will be safe, and I submit that it is absolutely unnecessary and useless to have a provision of this description.

I oppose the amendment.

Dr. NARESH CHANDRA SEN GUPTA: Mr. Reid has asked us to believe that the Select Committee intended one thing but wrote down something else, and what the Select Committee intended has been embodied in Mr. Reid's amendment. If that was the real intention of the Select Committee, they might just as well have saved themselves the trouble of incorporating this proviso because it does not help in any way. And if Mr. Reid really wants to do what he says he wants to do, he should not have put it in this form—"he did not know that it could." Mr. Reid has often told us in connection with this Bill that he is not a lawyer, but at any rate he must have read some of the laws because there are similar places where a certain form of expression is used, *i.e.*, that he did not know that it was likely to be used. Why were those words not used? Why this indefinite mood was used? Can anybody say when I am in possession of an offensive weapon, *viz.*, a pistol, that it could not be used for an offensive purpose? There are various circumstances under which the same thing can be used differently. Anybody who has such a book in his possession knows that it could be used in a different manner; so this takes away his defence under this head altogether. If I have a book written by one of the high priests of terrorism in Russia, for instance, for the purpose of studying how the movement went on there and also for the purpose of research and also in order to counteract the terrorist movement here and to get at the psychology of the terrorists and try to help in its extermination, I could not say that that book could not be used under any circumstances for the purpose of promoting or disseminating any doctrine tending to further or to encourage the terrorist movement. These eleventh-hour amendments as they are drawn up by Mr. Reid cannot be accepted merely because he confesses that this is a drastic measure and because he does not intend anything else. Mr. Reid has in another connection referred to the Preamble. As Mr. Reid is not a lawyer, I should tell him that it has been held over and over again by the courts that the Preamble does not govern any express words of an enactment. At the present moment, at any rate, the Cabinet is not lacking in legal knowledge, which could have informed Mr. Reid of this fact. Then, he asks us to look at his intention. Does Mr. Reid know that it has also been held over and over again by the courts, that the intention of the mover of a Bill or of half-a-dozen members of the Legislature is not admissible to interpretation under this section? It does not matter here what his intention is. If the matter goes to the court, the court will not interpret this section in terms of Mr. Reid's intention, but by the words that are there and according to the words

that are th if the matter came up to the court, the court must say that it is impossible for a person to prove that he did not know that a book which he knows to be in his possession could not under any circumstances be used for another purpose. Then, Sir, in the same clause Mr. Reid refers to books for research purposes. So far so good. If he had left it at that—study and research—no one would complain, but the words are *bona fide* research—*bona fide* research or study not connected with the furtherance, etc. If Mr. Reid wants something on different lines, he could do that if he talks over the matter with the draftsman in the Legislative Department and perhaps in the next session he could introduce an amending Bill, but this is not a thing which we should seriously consent to pass.

Mr. SYAMAPROSAD MOOKERJEE: I rise to oppose the amendment which has been moved by Mr. Reid and support the recommendations of the Select Committee. Here again, Sir, is an instance where an attempt has [illegible] made to alter a provision which has been recommended by the [illegible] Committee. I [illegible] nd the Hon'ble Mr. Reid or any of his co[illegible] ssent with regard to this particular provision. [illegible] ised when the Hon'ble Mr. Reid in moving his amendment said [illegible] at the object of altering this particular provision was with a view to making clearer the purpose which the Select Committee had in mind.

Mr. PRESIDENT: Order, order. I must adjourn the Council at this stage till half-past six to-day.

(The Council was then adjourned till 6-30 p.m.)

(On re-assembling.)

Mr. SYAMAPROSAD MOOKERJEE: Sir, before adjournment we were discussing amendment No. 241 moved by the Hon'ble Mr. Reid. Sir, as was pointed out in the original Bill as introduced, it was provided under clause 26 (proposed section 36) that the mere possession of certain literature would be an offence, and a person who was found in possession of such literature would be liable to imprisonment which may extend to three years or with fine, or with both. When the matter was discussed at that stage, objections were taken practically from all sides of the House, so far as Indian members were concerned, that this was of a drastic character and was liable to be applied to people who have nothing to do with the terrorist movement. The opinion was expressed at that time that when the report of the Select Committee would be received, the proper amendment could be moved to this provision so that it might not be abused. In the report of the Select Committee many alterations had been made to this provision which were to the effect that a person would not be liable under this section unless he

had the intention—the specific intention—that such literature should be used for the purpose of inciting to or encouraging the commission of an offence referred to in this clause. Now, Sir, this provision as recommended by the Select Committee at any rate protected *bona fide* possessors. It is therefore, Sir, a great surprise that the Hon'ble Member should take upon himself the responsibility of moving an amendment which would do away practically with the alterations made by the Select Committee. The alteration the Hon'ble Member now suggests to be made is that two conditions must be fulfilled before a possessor could claim exemption from liability. There must not be any intention on his part that such books should be used—not for the purpose of inciting to or encouraging the commission of any offence—but for the purpose of disseminating *any doctrine* tending to further or encourage the terrorist movement. This is put in a most delightfully general form. Also he must not possess the book or document in circumstances indicating that he did not intend that it should, and did not know that it could, be so used. As was pointed out by Mr. Basu and Dr. Sen Gupta, it is a [illegible] for a [illegible] how if he knows the English language th[illegible] that such a book could be used by some va[illegible] known person for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement. I would refer, for instance, to a book like the History of England. Now in that book there is a reference to certain circumstances under which an English monarch was beheaded. Now, Sir, if such a book fell into the hands of some persons with immature minds, it might be used for the purpose of disseminating some doctrine tending to further or encourage the terrorist movement. It is not a question of intention being present in the possessor that such a book should be used for illegal purposes, but a mere knowledge that it could be used by somebody for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement. Government realised that the report of the Select Committee as it stood would make it difficult for the application of such a provision to innocent persons, but the provision as it is now proposed to be amended by the Hon'ble Member would certainly make it easier for its application to those who may not have anything to do with the terrorist movement. Now one word more and I shall have done. Sir, I inquired at the earlier stage of the debate as to whether it was open to the members of the Select Committee to express an opinion which was contrary to what was embodied in the report of the Select Committee itself. You said, Sir, that naturally as time progressed, knowledge and wisdom might grow and opinions might undergo changes. It is a matter of surprise and some amusement that with regard to some members of the Select Committee, their knowledge and wisdom have grown exactly in the same manner and to the same extent as knowledge and wisdom have grown in the case of Government.

Mr. C. P. HOGG: Mr. President, when the Hon'ble Member moved this amendment, he emphasised the great necessity of taking steps to deal with the dissemination of pernicious literature. I would impress upon the House, Sir, that these clauses originated not as might be supposed from some of the speeches to which we have listened in the efforts of officials to find new methods of harassing the public but in the accumulated experience of the Government of Bengal in recent years. In passing, Sir, I would regretfully record a note of protest against the language which was used by some speakers in speaking on this amendment. Now let us come to the section. I should like to point out that the first part of section 36 deals only with literature of a particular kind, namely, any book or other document which incites to or encourages or tends to incite to or to encourage, the commission of any offence of murder, robbery, dacoity or criminal intimidation, or any offence punishable under the Indian Arms Act, 1878, the Explosive Substances Act, or certain sections of the Indian Penal Code. This is a condition precedent to any prosecution whatsoever under this section, and it is agreeable in the case of possession of what I might call criminal or murderous literature that a prosecution should be maintainable on that ground alone. Now, Sir, if hon'ble members will turn for a moment to amendment No. 257, they will see there that no complaint may be instituted or may be filed under this section unless the person accused intended that the newspaper, book or other document should be used for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement, or knew that it could be so used. Now, Sir, this amendment, if accepted, provides that the element of knowledge or intention must be present before any prosecution will be sanctioned, and in the amendment now under consideration we are dealing only with the penal section which requires that intention or knowledge must be present, and if a person proves that he had neither intention nor knowledge he is protected. He is entitled to claim an acquittal. Either of these elements must be present—knowledge or intention—before a conviction can be obtained. Both must be absent before an acquittal can be claimed. (A VOICE: "Knowledge of what?") Knowledge that this may be used for purposes tending to further the terrorist movement. If a person is found in possession of literature of this kind, he may have it for two purposes. He may be the person who actually intends to use that literature, or he may be a person who is keeping it, collecting and storing it for the purpose of its use by others. This is my submission, therefore, that it is the intention of Government that persons possessing neither knowledge nor intention will be protected, and so far as students are concerned, the second part of the amendment gives them the fullest protection. I would, therefore, submit, Sir, that this clause, as it now stands, gives all protection that is required to innocent possessors of literature of the class described in the first part of the section.

The Hon'ble Mr. Reid's motion being put, a division was taken with the following result:—

AYES.

Afzal, Nawabzada Khwaja Mohammad, Khan Bahadur.
Armstrong, Mr. W. L.
Ashworth, Mr. G. S.
Bal, Babu Lalit Kumar.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Bose, Mr. H. N.
Cohen, Mr. D. J.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. S. G. A.
Faroqui, the Hon'ble Nawab K. R. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghose, the Hon'ble Sir Charu Chunder.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Raha, Mr. P. N.
Hogg, Mr. G. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Mr. Tazmar Rahman.
Martin, Mr. O. M.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. S. K.
Norton, Mr. H. R.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Reid, the Hon'ble Mr. R. N.
Rose, Mr. J. R.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy, Mr. S. N.
Sarkar, Rai Bahadur Rohini Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deG.
Woodhead, the Hon'ble Mr. J. A.

NOES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Babu Kisheri Mohan.
Choudhury, Maulvi Rurul Absar.
Ghose, Dr. Amulya Ratan.
Malik, Mr. R.
Mookerjee, Mr. Syamaprasad.
Quasem, Maulvi Abul.
Ray, Babu Khetter Mohan.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra
Ray Choudhuri, Babu Hem Chandra.
Sahana, Babu Satya Kinkar.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.

"Ayes" being 44 and "Noes" 19, the motion was carried.

Mr. NARENDRA KUMAR BASU: Sir, I beg to move that in clause 26, in proposed section 38 (*1*), lines 5 and 6, the words "or a District Magistrate empowered by the Local Government in this behalf" be omitted.

Sir, I must frankly confess that my doubts regarding empowering District Magistrates to proceed under this section have been enhanced by the amendment which has just been accepted by the House. The House has seen that, by the amendment accepted, powers of starting the prosecution have been very much widened. In my submission instead of stopping the harassment of innocent persons and of persons against whom the intentions of the Local Government are not to proceed, it would be

enhanced by having the District Magistrate empowered by the Local Government in this behalf to sanction prosecution. Sir, the Hon'ble Mr. Reid has said several times over—and he seems to take a sort of covert pride upon the fact—that he is not a lawyer.

The Hon'ble Mr. R. N. REID: I only said it once.

Mr. NARENDRA KUMAR BASU: Mr. Reid says that he said it once, and that with a sense of covert pride as if in order to be a maker or an unmaker, a mender or a repairer of laws, it is a disqualification to be a lawyer. However, I hope the Hon'ble Member knows one of the elementary principles of law that a person's intention is judged by his action and that a person is presumed to intend the inevitable consequences of his act. In several of these clauses, I mean clauses 35 and 36, we have been told that though, if strictly read, they might catch innocent persons in their nets, the intentions of Government are that they will proceed only against persons who are connected with the terrorist movement or helping the terrorist movement. It is also trite law that the intentions of the Government, as stated by a Government member during the discussion of a Bill in the Legislative Council, is in no way binding on anybody in the administration of the law which thereby ensues. Therefore, Sir, if a District Magistrate were to apply these laws strictly and get into its net a perfectly innocent person—a person about whom I gave an illustration in the afternoon sitting, a person like myself who has to-day got certain proscribed books in his possession—I submit that the intention of the Hon'ble Member would in no way help me and would in no way help such innocent persons. Moreover, this power to initiate prosecution under these sections is such a drastic power, as has been admitted by the Hon'ble Member, that I see no reason why all these prosecutions should not wait till a sanction has been obtained from the Government of Bengal. Sir, it may be said by the Government of Bengal that if it were to have to pass orders on all these matters, it would take some time, but prosecutions under these sections are not matters of such vital moment that unless you prosecute a man to-day and wait till, say, two or three weeks hence, that the object of the law will be frustrated. I submit, Sir, that having regard, moreover, to the fact that District Magistrates are also the heads of the police of the district and have got to rely every day of their lives upon police reports, this becomes absolutely dangerous. I know and I am conscious of the fact that all District Magistrates are not allowed by this clause to initiate prosecutions, but those who are specially selected. But I do not know what criterion the Local Government will follow in specially empowering particular District Magistrates to do it. I take it that the criterion would be to empower the

District Magistrates of those districts where the circulation of this literature is more or less prevalent. Well, Sir, that will just defeat the purpose for which this clause with its safeguards—rather the unsafeguards now—was being enacted, because the District Magistrates of those places where terrorism is going on or where literature of this sort is being circulated, are more likely to jump at shadows—if I may use that expression—than the District Magistrates of other places, and if the Local Government were to empower the District Magistrates at places where his crime is not rampant, then, of course, it would defeat its own purpose. I see neither any necessity for empowering District Magistrates to do what ought to be done by the Local Government, nor any urgency about it. I therefore submit, Sir, that the words "District Magistrates" in this clause should be deleted.

The Hon'ble Mr. R. N. REID: Sir, it is a little difficult to reply to arguments which are clouded, may I say, by the strongest suspicion not only of the District Magistrate but also of the Local Government. I can only say in reply that Government do consider that they are right in giving this power in certain cases not in all cases to District Magistrates to make complaints to a court in respect of these offences. Mr. Basu said that if it was decided that the powers should be given to the District Magistrates of those districts in which this sort of offence was prevalent, then it would defeat its own end because the District Magistrate of such a district would naturally be inclined to be jumpy, and I suppose his conclusion from that would be that he would prosecute all and sundry. The only answer I can give to that is that if in a particular district this crime—and this is a very grave offence of circulating revolutionary literature in order to recruit persons to the terrorist movement, if that crime is prevalent in any district, then it is obviously necessary and much more necessary than in any other district that the District Magistrate should be empowered in this behalf, so that he acts and acts quickly. I have little to add, Sir, on that point except this, that from every point of view practical and otherwise—I do think it is reasonable that Government should have this power to be able to pass it on to District Magistrates to deal with this sort of cases. The sort of cases I am thinking of will be cases where a person will be found in possession of a bundle of revolutionary leaflets inciting to murder, and it stands to reason that, if we are to fight out terrorism, we must hit them hard and at once and not wait till the local officers have had to come up to Government who are said to be so terribly slow in working, but take action on their own initiative and without having referred to Government. I beg, Sir, to oppose the amendment.

Mr. Narendra Kumar Basu's motion was then put and lost.

The Hon'ble Mr. R. N. REID: I beg to move that in clause 26 for sub-section (2) of proposed section 38, the following sub-section be substituted, namely:—

"(2) No complaint shall be made under sub-section (1) unless the Local Government or the District Magistrate, as the case may be—

(a) is satisfied that the newspaper, book or document in respect of which the offence is alleged to have been committed contains words, signs or visible representations which tend to further or encourage the terrorist movement or the commission of any offence in connection with that movement; and

(b) is of opinion that the person alleged to have committed the offence—

(i) intended that the newspaper, book or document should, or knew that it could, be used for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement; or

(ii) is a person to whom the provisions of sub-section (1) of section 2 of the Bengal Criminal Law Amendment Act, 1930, are applicable."

This amendment, Sir, relates to sub-section (2) of proposed section 38 in clause 26 of the Bill, and it is consequential on that much abused and much discussed amendment No. 241, and I do not think I need reiterate the arguments which I gave in favour of that amendment. Actually, the only real point of change which this amendment embodies is contained in sub-clause (b) (i) of the amendment. I beg to move the amendment.

Mr. NARENDRA KUMAR BASU: Sir, I beg to oppose the amendment, and I submit that the reasons given for opposing amendment No. 241 apply with greater force to this, and there is a greater objection to this clause than to amendment No. 241, because here this sub-section (2) says that "no complaint shall be made under sub-section (1) unless the Local Government or the District Magistrate, as the case may be," is satisfied that certain things are there with regard to newspaper, book or document and is also of opinion that the persons alleged to have committed the offence should, or knew that it could, be used for the purpose of disseminating any doctrine. Sir, as I stated, it may be difficult for a person when he is put upon his trial to show to the court, unless he were illiterate, that he could not know that such literature could be used for disseminating any doctrine. I take it that the District Magistrate or the Local Government when he makes up his mind to order a prosecution will also be under the same difficulty. I

am not unmindful of what Mr. Hogg stated in reply, if you call it a reply, to the objections to amendment No. 241. He attempted to cover it as if it were a printing mistake. Unfortunately, it is printed as "could." If the word were "would" there would be some sense in it, but Mr. Hogg while speaking on the same amendment protested against some of the remarks made by some previous speakers in opposing amendment No. 241. I shall for his benefit say that by addition of the words "knew that it could be used," the Government have not only gone back upon the recommendations of the Select Committee but done something that is either dishonest or foolish. I say, Sir, that we have not had any cogent reply to my arguments, but we have been told that it is not the intention of the Government. As I have already submitted, it does not matter about the inner intention of Government if there is any in this matter. Government, I take it, is like a Corporation. It has neither a body to be kicked nor a soul to be damned, and therefore I do not know whether there is anything like intention of the Government, but even if there is intention of the Government they have got to be judged in a court of law under legal procedure, and it does not matter whether this or that limb of the Government says that we, the Government, did not intend such and such a thing. The only thing that does matter is the fact of the language of the statute which has got to be construed in courts. I submit that the only reason for these words "or knew that it could be used" in this clause is to nullify the safeguards that had been put in by the Select Committee. Whether that is done in ignorance or it is a malignant intention, I do not know and I do not know the author, whoever he might be, but the Hon'ble Mr. Reid has fathered it on the Council, but he has not taken the sole responsibility for it. It says that when Government considered this clause, they came to a certain decision. Therefore, Sir, I say the indeterminate Government which has originated this clause is either a knave or a fool.

Dr. NARESH CHANDRA SEN GUPTA: I oppose this amendment. We have been assured by the Hon'ble Mr. Reid and by Mr. Hogg that this section is to come into operation under certain circumstances. Mr. Reid has said in speaking on the last motion that this clause is directed against the dissemination of terroristic literature. Sir, if that is so, why should the section be couched in a language which extends far beyond that. If Mr. Reid had taken care to draft the section in such a way as to include this sort of literature, he would not have heard many things which he heard. It extends by its language; what is the reason? Is there any reason why this section should be amended as it is? This is not a rule which would be interpreted by a court of law. It is only a rule that guides the Government or the District Magistrates in giving their sanction. Therefore, there would be a very great risk

in laying down a principle with a certain amount of precision so that the sanction would not be given except in the case where the possessor of a book is definitely shown to be in possession for the purpose of the dissemination of terrorist literature. Therefore, there was certainly much greater risk in giving more limited powers to the Magistrates in giving sanction. Then in the other sections where the courts are called upon to decide whether an offence has been committed or not. But if it is the intention of the Government to use this for the purpose of preventing dissemination of terrorist literature tending to incite murders, robberies, etc., and that sort of purpose—terrorist conspiracy, why should the Government insist upon sanction being given not only where the intention of the keeper of the book was to promote terrorist movement but also where there was no such intention. *Ex-hypothesis* this additional clause implies that there is no such intention when Government is not satisfied or the District Magistrate is not satisfied that there was any intention on the part of the possessor to use the book for the purpose of promoting terrorist movement. But there was knowledge; a knowledge of what? That it could be used for the purpose of disseminating any doctrine, not only disseminating terrorist but any doctrine tending to further or encourage the terrorist movement. Why all these precautions to make the net so widespread when the matter is giving direction to the District Magistrate or the Local Government in the matter of giving sanction. As it is, the District Magistrates who are empowered in this behalf would be too willing to give sanction and what is needed is the restriction of their powers to extend them. It has been the experience of all of us that Government cannot be ignorant of the fact that even before some of the laws passed came into force, the District Magistrates were taking action upon the laws as they stood before as if these laws had been enacted. Extraordinary orders had been passed under section 245 of the Criminal Procedure Code before the Ordinances and the Criminal Amendment Acts were passed are sufficient proof of that. So what is wanted is not to give them a long rope, but to give as much a short rope as possible. As far as the question of giving sanction is concerned, it is intended to limit the language to the definite object of terrorist intention only, the definite intention to promote terrorist movement only. There is no reason whatsover why that should not be done.

Mr. C. P. HOGG: Mr. President, Sir, as I have said before, these clauses have been drafted in close relationship with the difficulties as they are disclosed in the experience of recent years. There are cases where large quantities of extremely seditious literature and leaflets have been discovered in the possession of persons, in boxes, in trunks and in rooms. In such cases it is often extremely difficult to prove what was the intention of the party in whose possession such documents are

found. Nevertheless, it will be conceded that if a person is found in possession of such literature in large quantities he could only have had it with the intention or with the prospect that someone will use it for the purposes at which this clause is aimed. If this does not constitute an offence at all, then what could? In all cases the discretion of the Magistrate or the Local Government would be used before a prosecution is sanctioned. This clause is definitely drafted in order to prevent the initiation of unnecessary or unreasonable complaints. As I say, there are cases in which literature has been found in the possession of people who obviously intended it to be used for the dissemination of pernicious doctrine and the commission of crimes such as murder, etc., and it is only right and reasonable and fair that conduct of that kind should be made an offence.

The Hon'ble Mr. Reid's motion being then put, a division was taken with the following result:—

AYES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur
Armstrong, Mr. W. L.
Ashworth, Mr. C. S.
Barma, Rai Sahib Panchanan.
Birkmyre, Mr. H.
Bottomley, Mr. J. M.
Burn, Mr. H. H.
Cohen, Mr. D. J.
Dain, Mr. S. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Égley, Mr. H. H. A.
Faroqui, the Hon'ble Nawab K. S. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghose, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dildusr.
Gilchrist, Mr. R. N.
Gladding, Mr. S.
Guha, Mr. P. N.
Hogg, Mr. N. P.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Mr. Razaur Rahman.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Nag, Reverend B. A.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Norton, Mr. H. R.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur.
Reid, the Hon'ble Mr. R. N.
Ross, Mr. J. B.
Ray, the Hon'ble Sir Bijoy Prasad Singh.
Ray, Mr. Saileswar Singh.
Ray Mr. Sarat Kumar.
Ray, Mr. S. N.
Sarkar, Rai Bahadur Rohati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

NOES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Bakeb, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Basu, Mr. Barendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Babu Kishori Mohan.
Choudhury, Maulvi Abdul Ghani.
Choudhury, Maulvi Nurul Absar.
Ezedji, Maulvi Nur Rahman Khan.
Ghosh, Dr. Amulya Ratan.
Hossain, Maulvi Muhammad.
Maiti, Mr. R.
Momin, Khan Bahadur Muhammad Abdul.
Mookerjee, Mr. Syamprasad.
Qassem, Maulvi Abul.
Rahman, Maulvi Atiqur.
Ray, Mr. Shanti Shekheswar.
Roy Choudhury, Babu Satish Chandra.
Roy Choudhuri, Babu Hem Chandra.
Sahana, Babu Satya Kinkar.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.

"Ayes" being 52 and "Noes" 24, the motion was carried.

The Hon'ble Mr. R. N. REID: I beg to move that in clause 26 for proposed section 39, the following section be substituted, namely:—

"39. Notwithstanding anything contained in the Code, an offence punishable under section 35 or section 36 shall be cognizable and bailable."

The original Bill had no reference to this question of "cognizable and bailable," and the Select Committee decided to put in this clause in order to clarify the situation. Their reading was that offences punishable under section 35 should be cognizable and bailable, but that offences under section 36 should be non-cognizable and bailable. I shall no doubt be charged with the alternatives of crass stupidity or dishonesty in moving this amendment, but the point is that Government find themselves unable to agree that cases coming under section 36 should be distinguishable from cases under section 35. The type of literature which is aimed at in section 36 is at least pernicious as or even more pernicious than the sort of thing that one is expected to deal with under section 35, and it seems to be undesirable when a man has in his possession a quantity of revolutionary literature coming within section 36; and I think most people know how pernicious, how inflammatory, and how seductive such literature can be—that in such cases the police should not be able to arrest him straightaway but will have to apply to the court before they can draw up proceedings. We are dealing with a crime of a most infamous sort—the dissemination of pernicious literature with one object, and that is the cult of murder. I submit that those who are found in possession of such literature deserve as short a shrift as possible. If cases coming under section 36 are not made cognizable, the chances are that the man in whose possession the revolutionary stuff is found will be able to abscond and the power under this section will be rendered nugatory.

Mr. NARENDRA KUMAR BASU: I beg to oppose this amendment, and I may at once dispel the doubt of Mr. Reid about my repeating the two alternative charges that I laid with regard to the other two amendments. There is no alternative in this case. The only alternative is the first one. I shall make my point clear at once. An offence under section 35 is to be made cognizable, because in cases under section 35 Government may in its wisdom supply the police officer with a list of books which have been proscribed; there is no discretion left either in the police or in the persons who have those books. In the case of section 36 the matter is beautifully vague, and there it is made cognizable so that the police may get innocent persons into their net. Therefore, I say there is no second alternative about this. So far as the reasons given by Mr. Reid are concerned, he is always thinking of the people who are guilty under section 36 but not about

the innocent persons who may be harassed by the police under the vague and general language of section 36. Mr. Hogg was pleased to repeat what has been stated several times that it was not the intention that innocent persons might be harassed. Poor innocent persons! I do not know whom to pity more, whether the members on the Government Benches, because the Home Member and the Chief Secretary give us the assurance that innocent persons will not be harassed, or the innocent persons who will be harassed even though they have not the slightest idea or intention of doing anything for helping the terrorist activities. As I have said more than once in the course of this week-long debate, the law ought to be such that, while ensuring that those who are guilty should be punished or proceeded against, innocent persons may not be harassed. I submit that if you make the offence under section 36 cognizable, then you allow a number of innocent persons to be harassed, whether the Home Member or the Chief Secretary or the Additional Secretary had intended it or not. I, therefore, hope that even at the last moment the Hon'ble the Home Member will accept the recommendations of the Select Committee and withdraw his amendment. It was made patent in the Select Committee that section 35 being definite, there was not much harm in making offences under that section cognizable, but to make offences under section 36 cognizable is not desirable and that power ought not to be left with the local police. It is not as if only the heads of the police either in Calcutta or in the districts will have the power to arrest without warrant, but any police officer may arrest without warrant if the offence is made cognizable, and therefore the poor innocent persons will be harassed, and I submit there is no justification for this.

Khan Bahadur MUHAMMAD ABDUL MOMIN: The last amendment of the Hon'ble Mr. Reid appears to me as if it were the last straw on the camel's back. I oppose this amendment and in doing so I want to make it clear why I do so. Unlike my friend Mr. Narendra Kumar Basu I do not for a moment doubt the motives of Government, but I certainly question their wisdom in giving such large powers to the police as is contemplated by this amendment. So far as the really guilty persons are concerned, of course there can be no question that the police ought to have power to act and act as quickly as possible. On the other hand, it is not only possible but may be very likely that in many cases innocent persons may be persecuted and harassed by the police if not on their own initiative but on the initiative of their enemies. For instance, if a certain enemy of mine goes to the police and says that there are some proscribed literature in my house with my knowledge, the police will have power to search my house and perhaps arrest me without any reference to any higher authority. I specially oppose this amendment because I know of cases in which the

houses of very respectable persons, some Government officials, have been searched and boys have been arrested only on the ground that in the exercise book of a certain friend of a particular boy the address of a certain boy who was implicated in some terrorist movement was found. In a case of this nature it is extremely dangerous that the power of arresting or making house searches or taking cognizance of cases should be given to the police irrespective of their rank. I think that the clause as it came out of the Select Committee was bad enough, and this amendment will make it very much worse.

Mr. C. P. HOGG: The simple reason for this amendment is the fact that the people in whose possession literature of the kind under discussion may be found are likely to abscond, if they get the chance, and will never be seen again. We cannot take the risk of these people getting away without placing some form of restraint in their way which will enable Government to keep in touch with them. Government cannot take the risk of making the offence non-cognizable.

Dr. NARESH CHANDRA SEN GUPTA: With regard to this section, it is suggested that it should be a cognizable offence. Now looking at section 38, sub-sections (*1*) and (*2*), I find that no prosecution can be started without the sanction of the Local Government. Supposing there is a case where the District Magistrate has not been empowered as is contemplated in section 38 (*1*) and a man is arrested by the police before the Local Government's sanction is received. What will be the position of the man in the meantime? The police has got to produce the man before the District Magistrate within 24 hours, because he is not one of the persons who can be kept for seven days. What will be his position during the interval before the sanction of the Local Government is received? Before the sanction is obtained, the court can take cognizance of the matter.

The Hon'ble Mr. R. N. REID: I would suggest that he would be on bail.

Dr. NARESH CHANDRA SEN GUPTA: But for what offence?

The Hon'ble Mr. Reid's motion being put, a division was taken with the following result:—

AYES.

Ahsan, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Armstrong, Mr. W. L.
Ashworth, Mr. S. G.
Birkmyre, Mr. H.
Bolkowtey, Mr. J. M.
Born, Mr. N. N.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. R. G. A.

Perequi, the Hon'ble Nawab K. F. M., Khan Bahadur.
Pawsey, Mr. L. R.
Ferguson, Mr. R. N.
Ghose, the Hon'ble Sir Charu Chander.
Ghuznavi, the Hon'ble Alhadj Nawab Bahader Sir Abdelkerim, of Dildaar.
Gilchrist, Mr. R. R.
Rindding, Mr. D.
Guha, Mr. P. R.
Hogg, Mr. B. P.
Hossain, Nawab Mucharrut, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Mr. Razaur Rahman.
Maguire, Mr. L. T.
Martin, Mr. O. M.
Mitter, Mr. G. C.
Mitter, Mr. S. C.
Nag, Reverend R.A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. G. K.
Norton, Mr. H. R.
Rahaman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur.
Reid, the Hon'ble Mr. R. N.
Ross, Mr. J. B.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. S. R.
Sarker, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Akshoy Kumar.
Sen, Mr. B. R.
Steven, Mr. J. W. R.
Suhrawardy, Mr. H. S.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. W. A. M.
Wilkinson, Mr. H. R.
Williams, Mr. A. deG.
Woodhead, the Hon'ble Mr. J. A.

NOES.

Baksh, Maulvi Syed Majid.
Dal, Babu Lalit Kumar.
Banerji, Mr. P.
Barman, Babu Premhari.
Barma, Rai Sahib Panchanan.
Basu, Jatindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chaudhuri, Khan Bahader Maulvi Alimuzzaman.
Chowdhury, Maulvi Abdul Ghani.
Choudhury, Maulvi Nurul Absar.
Eusufji, Maulvi Nur Rahman Khan.
Ghose, Dr. Amulya Ratan.
Hoque, Kazi Emdadul.
Hossain, Maulvi Mohammad.
Maiti, Mr. R.
Momin, Khan Bahadur Muhammad Abdul.
Mookerjee, Mr. Syamaprasad.
Quasem, Maulvi Abul.
Rahman, Maulvi Aziaur.
Ray, Babu Amulyadhan.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Ray, Mr. Shanti Shekhareswar.
Ray Chowdhury, Babu Satish Chandra.
Ray, Mr. Sarat Kumar.
Roy Choudhuri, Babu Hem Chandra.
Sahana, Babu Satya Kinkar.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chanda.
Shah, Maulvi Abdul Hamid.

"Ayes" being 50 and "Noes" 31, the motion was carried.

Mr. PRESIDENT: Before I put the Preamble; I would remind the House that I had postponed the consideration of an amendment on clause 1A, standing in the name of Babu Hem Chandra Roy Choudhuri; but, I think the member will agree with me when I say that his amendment is no longer alive.

Mr. NARENDRA KUMAR BASU: Why not, Sir?

Mr. PRESIDENT: Well, the matter does not affect Mr. Basu. Nevertheless, I may tell him that as the House has already decided that the provisions which fixed a time limit on two Acts dealt with in this

Bill should be omitted, any amendment which has the effect of restoring the time-limit would be raising a question already decided by the House. On these grounds, I do not think this amendment arises.

The motion that clause 26, as amended stand part of the Bill was then put and agreed to.

Preamble.

The motion that the Preamble stand part of the Bill was then put and agreed to.

The Hon'ble Mr. R. N. REID: I beg to move that the Bengal Criminal Law Amendment Bill, 1934, as settled in Council be passed.

Babu JATINDRA NATH BASU: Sir, the country is passing through such a state of things that the Government now in charge of the administration has been adopting special measures from time to time to face that situation. Sir, this is not the first measure of its kind. For several years past measures have been taken one after another to entrust the executive with the powers they have called for with a view to improve the situation and to smooth the difficulties that have arisen. To us, Sir, it appears that in spite of the powers that have been taken by the executive from time to time it does not appear that the situation has been properly grappled with or that the mischief that these measures were made to remove has at all been removed or properly dealt with. If the past is any indication of what is going to happen in the future, Sir, there does not appear to be much prospect of success for this extraordinary measure too. On the other hand, as has been pointed out during the detailed discussions of the various clauses of the Bill, the Bill contains provisions which can make large encroachments upon the ordinary liberties of the subjects, apart from affecting persons who are really criminals. It is that aspect of it that creates discontent and spreads it and the atmosphere that is created by measures like this probably creates much greater danger than the crimes which these measures are meant to suppress or prevent. The Government no doubt has fully considered the situation; so far as a part of the public is concerned, they do not know what information Government has, as not having been taken into their confidence, the public are not in a position to know as to why there was this urgency. In all the speeches

that have been delivered it has been made clear that these measures were meant to meet an extraordinary situation. But the attempts that have been made by those that have moved some of the amendments to limit the operation of the Bill to a temporary period have been opposed by Government. As was pointed out in one of the speeches of Mr. Narendra Kumar Basu, it was stated on the authority and on behalf of the Government that the new constitution will be coming in a short time. It was necessary for the new constitution to continue this provision. It has not been made clear to us why many of these provisions should have a permanent place on the statute book: that is also an element which in the present state of public feeling cannot be said to be reassuring. Sir, what is wanted is that Government measures should not only try to meet the crime, the revolutionary danger, but should also try to create confidence and trust in the minds of the people. It does not appear that any step has been taken with the view of creating public confidence or of spreading it.

Mr. SHANTI SHEKHARESWAR RAY: Sir, though it is a very late stage, I feel it my duty to Government as well as my countrymen to record my humble but emphatic protest against this Bill. Sir, what has struck me is this, that in connection with this Bill, the attitude of the public has been one of complete indifference. As a constitutionalist, I feel it to be a very dangerous thing. The whole Hindu population in Bengal is in a mood of sullen despair. Sir, that despair may at any moment find expression which may lead to grave and serious consequences. Sir, this position is not to be judged by the voting in this House, because it is well known that long ago the dominant party in this country whose position in the estimation of my countrymen is not challenged in any quarter, has left this House.

Mr. PRESIDENT: Order, order. I cannot allow you to proceed on that line. It is a reflection on the House.

Mr. SHANTI SHEKHARESWAR RAY: But, Sir, whatever may be the voting strength of the Hindus in this House on this Bill, the feeling of the Hindu community outside the House is totally against this measure. Sir, in this House, we are grateful for the support that we have received from our Moslem colleagues, and that, I believe, will be a great consolation to the Hindu population in Bengal. Sir, in this hour of our distress, this support will hearten us.

Sir, there is very little to say. I only hope the day will soon come when it will be impossible for a Bureaucratic Government to pass such a "dark measure" by official votes, by all the resources at

their command, through a Legislative Council that sits in the darkest hours at night. Sir, it is only in the fitness of things that this "dark" measure was discussed at midnight yesterday. Sir, Government employed methods totally against the spirit of the constitution. It was stated in this House that the Voting List was not allowed to be published in the press.* The Press Officer sent round word that it was not desirable that votes of persons should be announced. I do not know what reason he had; but, Sir, the fact remains that votes have been cast in this House in favour of this measure without being announced. I do not know whether the Press Officer did that at the request of gentlemen who regretted their votes in support of Government. Sir, if that was so, I leave it to the House, as well as to others outside, how far there was free voting on this question. Sir, constitutionalists like me have the courage of their conviction: we have opposed the Government, knowing that it is a powerful Government.

(The speaker having reached the time-limit, resumed his seat.)

Dr. NARESH CHANDRA SEN GUPTA: Sir, I do not want at this hour to go into general principles which I have already discussed, and the possible consequences that would follow. But I may only tell the House that, more than once during the debate on this Bill, I have sounded a note of warning. When the Hon'ble Mr. Reid was insisting upon the death penalty, upon the seven years' imprisonment and other things, I thought as if I were listening at that late hour of the night to the words of the Queen who said "off with their heads." Sir, not only this. The unreasoning proposals of the Government were not backed up by any cogent grounds They could not among themselves knock out a single sound argument [thus reminding me of the trial of Judge (?)]. But this I hope that, after all, the day was not far distant when we shall have the consolation of saying like Alice, "you are nothing, you are nothing but a pack of cards." The pack of cards would be blown off into space and Alice's wonderland will disappear. But if it does not, there is only one thing I would ask the Home Member who has sponsored this Bill to do, and this was that after he had retired, he would make India his home and live under the administration of this Act in India and know what sort of "Wonderland" it had produced.

The motion being put, a division was taken with the following result:—

AYES.

Ahmad, Rawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
[illegible], Mr. W. L.
Ashworth, Mr. C. S.
Bal, Babu Lalit Kumar.
Barma, Rai Sahib Panchanan.
Birtwyre Mr. M.

Bottomley, Mr. J. M.
Cora, Miss N. N.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. H. G. A.
Ensafji, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ferguson, Mr. R. H.
Ghose, the Hon'ble Sir Charu Chandra.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dilduar.
Hirshfort, Mr. R. R.
Gladding, Mr. D.
Guha, Mr. P. N.
Hogg, Mr. G. P.
Hussain, Nawab Musharraf Khan Bahadur.
Hussain, Maulvi Mohammed.
Hussain, Maulvi Latafat.
Khan, Mr. Razaur Rahman.
Maguire, Mr. L. T.
Martin, Mr. D. M.
Miller, Mr. C. C.
Mitter, Mr. S. C.
Momin, Khan Bahadur Mohammed Abdul.
Mullick, Mr. Mukunda Behary.
Nag, Reverend B.A.
Nandy, Maharaja Sris Chandra, of Kasim Bazar
Nazimuddin, the Hon'ble Mr. Khwaja.
Nicholl, Mr. C. K.
Norton, Mr. H. R.
Quasem, Maulvi Abul.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Ray, Babu Khetter Mohan.
Reid, the Hon'ble Mr. R. N.
Rees, Mr. J. R.
Ray, the Hon'ble Sir Bijoy Prasad Singh.
Ray, Mr. Saileswar Singh.
Ray, Mr. Sarat Kumar.
Ray, Mr. S. N.
Sahana, Babu Satya Kinkar.
Sarker, Rai Bahadur Rebati Mohan.
Sen, Rai Sahib Abhay Kumar.
Sen, Mr. R. R.
Steven, Mr. J. R.
Suhrawardy, Mr. H. S.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Wilkinson, Mr. H. R.
Williams, Mr. A. deC.
Woodhead, the Hon'ble Mr. J. A.

NOES.

Bakh, Maulvi Syed Majid.
Banerji, Mr. P.
Basu, Babu Satindra Nath.
Basu, Mr. Narendra Kumar.
Bose, Mr. S. M.
Chowdhury, Maulvi Abdul Ghani.
Choudhury, Maulvi Nurul Absar.
Ghose, Dr. Amulya Ratan.
Hoque, Kazi Emdadul.
Maiti, Mr. R.
Mookerjee, Mr. Syamaprasad.
Ray, Mr. Shanti Shekhereswar.
Ray Choudhuri, Raba Hem Chandra.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.

"Ayes" being 61 and "Noes" 16, the motion was carried.

The Bengal Excise (Amendment) Bill, 1934.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, I beg to move that the Bengal Excise (Amendment) Bill, 1934, be taken into consideration.

The House will remember that just a few days ago I had the honour of introducing this Bill in this House. It is more or less an administrative amendment. The Bill involves no question of principle. *Bakar* is a fermenting substance used for the preparation of the country liquor *pachwai*. Sir, a few years ago it was brought to the notice of Government that there were several cases of poisoning due to the drinking of *pachwai* which was attributed to the presence of this substance *bakar* with which was mixed aconite. So it was made exciseable under the Bengal Excise Act, but since then the

effect of the amendment to the Bengal Excise Act was nullified by the amendment to the Dangerous Drugs Act, and now as *bakar* is neither an intoxicating liquor nor a narcotic substance, it does not come under the purview of the Bengal Excise Act, and to bring it under control it is necessary that the Bengal Excise Act should be further amended so as to include *bakar* in it. With this object in view this Bill has been introduced. It is a simple Bill, Sir, covering only two clauses and I hope the House will agree to it. It involves no question of policy, as I have said, and it is merely a change in the interest of administration.

The motion that the Bengal Excise Amendment Bill, 1934, be taken into consideration was then put and agreed to.

Clauses 1, 2 and the Preamble.

The motion that clauses 1 and 2 and the Preamble stand part of the Bill was put and agreed to.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, I beg to move that the Bill as settled in Council be passed.

The motion was put and agreed to.

The Bengal Alluvial Lands (Amendment) Bill, 1934.

Mr. O. M. MARTIN: Sir, I beg to present the report of the Select Committee on the Bengal Alluvial Lands (Amendment) Bill, 1934.

The Hon'ble Sir CHARU CHUNDER GHOSE: Mr. President, Sir, with your permission I would ask the Revenue Secretary to go on with this Bill in my place.

Mr. PRESIDENT: Yes, he may. I have no objection if you delegate your powers to him.

Maulvi ABUL QUASEM: Sir, I have given notice of something like 18 amendments and every one of them is of great importance.

and I shall speak on every one of them. I do not know how long you are going to sit to-night as I want to speak on each of the amendments.

Mr. PRESIDENT: But that need not stop us here.

Mr. O. M. MARTIN: Sir, I beg to move that the Bengal Alluvial Lands (Amendment) Bill, 1934, as amended by the Select Committee, be taken into consideration.

The motion was then put and agreed to.

Clause 1.

The motion that clause 1 stand part of the Bill was put and agreed to.

Clause 2.

Mr. MUKUNDA BEHARY MULLICK: Sir, I beg to——

Mr. PRESIDENT: Mr. Mullick, would you move all the amendments standing in your name under this clause? I think that if you move all your amendments and make one speech, you will save a good deal of our time. I suggest this course because all the amendments are yours. The Hon'ble Member will reply on each of them separately, and I shall put them separately.

Mr. MUKUNDA BEHARY MULLICK: But, Sir, the difficulty is that these amendments deal with entirely different matters. I shall, however, move them all and make one speech on them.

Sir, I beg to move that in clause 2(*1*) in proposed sub-section (*1a*) of section 3, line 6, after the words "his district," the following be inserted, namely:—

"and recording his reasons therefor."

I beg also to move that in clause 2(*1*) in proposed sub-section (*1a*) of section 3, lines 12 and 16, for the word "case," the word "proceeding" be substituted.

I beg further to move that in clause 2(*1*) in proposed sub-section (*1a*) of section 3, lines 12 and 13, the words "or any portion" be omitted.

Sir, so far as my first amendment is concerned, my reason for moving this amendment rests primarily on this ground that having regard to the extraordinary powers that are going to be conferred on the Collectors, namely, the power of assuming jurisdiction under this Act over lands lying entirely outside his original jurisdiction, the reason which makes the Collector to do so must be put in writing. No court of law in the province, except the High Court in its Original Side, has, under the present state of the law of the country, the powers of assuming jurisdiction over a subject matter which lies entirely outside its Original Jurisdiction and that power is not conferred upon the High Court by any legislative enactment of this province or of the Imperial Council——

Mr. O. M. MARTIN: Sir, Government are willing to accept the first amendment in a modified form, which should be—after the words "his district may" the following be inserted, "after recording his reasons therefor."

Mr. MUKUNDA BEHARY MULLICK: With your permission, Sir, I would like to accept the modification suggested by Mr. Martin.

As regards my second amendment, this is more or less of a technical nature and that the expression generally used is "proceeding" and not the word "case." Therefore, Sir, I propose that for the word "case" the word "proceeding" be substituted. Sir, the Collector has not got any final jurisdiction in such matters. He only holds for the time being some little power and eventually may transfer the case. It is for this reason that I have moved this amendment.

So far as my third amendment is concerned, you will find that in proposed sub-section 3(*1a*), the words "or any portion" occurring in the 12-13th lines thereof should be omitted. My reasons for this proposal are, that when of the same *char* land one portion lies within the then territorial limits of one district and the rest within that of another district, and such two portions are dealt with by two Collectors, two reference cases would inevitably follow thereupon; it may generally happen that the same claimant will have to litigate on the identical title in the two civil courts of two districts, which will put the parties to unnecessary hardship and costs and may also result in conflicting decisions, which every legislation should try to avoid.

According to the Code of Civil Procedure, any party, litigating on the same cause of action and title regarding properties situated in more districts than one, is to institute the suit in any one of the courts having territorial jurisdiction of any portion of such properties, and the party is not required to litigate on the same cause of action

and on the same title in different courts. It is based on the principle that courts should always try to avoid multiplicity of proceedings and conflict of decisions on the same matter.

There is another reason in justification of this amendment. In the proposed amendment, clause 4(2), an indication is given that the Collector is to make the reference to the district within the jurisdiction whereof major portion of the lands is situate. This provision certainly rests on the foundation that the attaching Collector keeps with him the entire lands and consistently with this provision, transfer of portions of attached lands become inconsistent and illogical. It is one thing to attach and it is another thing to make a reference, but the two powers should be so exercised as to work harmoniously without causing hardship and inconvenience to the parties. If this adjustment is not made in this part of the Bill and it is allowed to stand, the proposed amendment in section 2 will be meaningless and it may so happen that it will lead to impossible positions.

With these words, Sir, I commend my motions to the acceptance of the House.

Mr. O. M. MARTIN: Sir, as regards Mr. Mullick's second amendment, Government prefer the word "case." This is purely a drafting point whether we should use the word "case" or "proceeding." In the same sub-section the word "proceeding" has already been used, in a slightly different sense. The word "case" is clear and unambiguous in this context and therefore we prefer to use it, instead of "proceeding."

As regards the third amendment, Sir, Mr. Mullick seems to be labouring under a misapprehension that there will be danger of neighbouring Collectors quarreling as to who was to attach what land. Sir, such a contingency will never arise as these matters are always settled by arrangement between the different Collectors concerned having regard to the convenience of the public, and the necessities of public business. These words "or any portion" are necessary because it might be necessary for a Collector to relinquish or transfer one portion of a *char* to another Collector for disposal. Such cases would probably be rare, but they are conceivable. For instance, a *char* might originally be compact, when attached and subsequently become divided by a deep channel. In such a contingency, the Collector of one district might find it convenient for the purpose of preparing the reference to transfer part of the land which he had attached to the Collector of another district. For this reason and as a matter of convenience, we wish to keep the words "or any portion." I can assure Khan Bahadur M. A. Momin that such a contingency might arise and it is not safe to assume that there is no likelihood of it arising at all.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, I am not convinced by Mr. Martin's argument that Mr. Mullick's amendment is unnecessary. This is not a question of a quarrel between the two Collectors, but cases may happen that the main stream of a river intervenes between two *chars*, one may fall in one district and the other in another district and the Collector not able to attach any of them. The Collector in whose jurisdiction a particular *char* appears will be able to dispose of it. If the boundaries between the two *chars* are definite, then both of them will be attached by the Collector of the two districts respectively. But in a *char* whose boundaries are not ascertainable or about which the Collector is not definite, difficulty may arise and when he finds subsequently that a certain portion of a *char* really belongs to another district there might be difficulty. Here, again, he may transfer the same for disposal to that particular Collector. But the difficulty is that if the two officers issue different orders about the same class of land, there might be conflict between them. Therefore, it is desirable that the whole of the *char* land should be disposed of by one officer.

Mr. NARENDRA KUMAR BASU: Sir, I desire to know whether a member can speak twice on the same motion. I think that even with your unlimited powers, Mr. Martin should not be allowed to speak again.

Mr. PRESIDENT: I know, but the rules are elastic enough to allow the President to use his discretion. In the House of Commons, under special circumstances, a member of Government is allowed to speak twice. Ordinarily, it should not be encouraged, but in special cases the stringency of the rule has got to be relaxed. If Sir Charu will not, his Secretary must be allowed to speak in the interest of the House itself.

Mr. O. M. MARTIN: Sir, I certainly agree with Khan Bahadur M. A. Momin that such cases are not likely to occur frequently, but they may occur once in ten years or so. It is just possible that it might be convenient for a Collector to transfer part of an attached *char* instead of the whole, so it is considered advisable to retain this power under the Act.

Khan Bahadur MUHAMMAD ABDUL MOMIN: May I ask whether Mr. Martin knows that a *char* land between Nadia and Pabna have shifted between these two districts at least five times during the course of the last year?

Mr. O. M. MARTIN: Sir, I am not aware of the fact.

Mr. Mukunda Behary Mullick's motion in a modified form, that in clause 2 (*1*) in proposed sub-section (*1a*) of section 3, line 6, after the words "his district" the following be inserted, namely, "after recording his reasons therefor" was then put and agreed.

Mr. Mukunda Behary Mullick's motion that in clause 2 (*1*) in proposed sub-section (*1a*) of section 3, line 12, for the word "case" the word "proceeding" be substituted was then put and lost.

Mr. Mukunda Behary Mullick's motion that in clause 2 (*1*) in proposed sub-section (*1a*) of section 3, lines 12 and 13, the words "or any portion" be omitted was put and lost.

Mr. PRESIDENT: I propose to skip over the next amendment as it is of no importance at all and need not be moved.

The following motion which stood in the name of Maulvi Abul Quasem was, thereupon, not moved:—

"that in clause 2 (*3*) (*ii*) in proposed amendment of section 3, lines 4 and 5, before the word 'proceedings', the word 'the' be inserted."

Mr. MUKUNDA BEHARY MULLICK: Sir, I beg to move that in clause 2 (*3*) (*ii*) after the proposed amendment of section 3, the following provisos be added, namely:—

"Provided that the Collector shall cancel his order of attachment with regard to any land, if he is satisfied that possession of such land has been given to a person in execution of any process of a Court of competent Civil Jurisdiction:

Provided also that if after attachment and before any reference is made such possession be delivered in favour of any party or any party be declared entitled to such possession with regard to the subject-matter of dispute or any portion thereof by a Court of competent Civil Jurisdiction, and the Collector be informed of the same, the Collector shall stay all such proceedings with regard to such land and cancel his order of attachment thereto."

Sir, these proposed clauses were in the Bill introduced by me in this Council to amend the Bengal Alluvial Lands Act in 1933 and at that time Government requested me to withdraw the Bill, inasmuch as the

Government proposed to introduce a more comprehensive Bill including those contained in my Bill and on that assurance from the Government I withdrew my Bill. But although the Government has introduced its Bill, the amendments proposed in my Bill have unfortunately not been incorporated therein. My reasons for introducing these two provisos are based on these principles: In the first place, the only purpose of this Act is to prevent disputes with regard to recently formed *char* lands. Secondly, the Act desires to achieve that end by having a determination from civil court on the question of conflicting title. Thirdly, the person who is declared by the civil court to have title is to be put in possession by the Collector. Fourthly, that being the only aim of the existing statute, as soon as the Collector finds on attaching a land, that the civil court has determined title of that land, he ought to hold that no reference is necessary because the purpose, that this Act will ultimately attain, has already been achieved in the civil court. Fifthly, if after attachment the attention of the Collector is drawn to the fact that competent court of civil jurisdiction has determined its title, the Collector ought to stay its hands and cancel his order of attachment. Sixthly, that in both the preceding cases the possession obtained by the party is a lawful one and the Collector ought to respect such lawful possession. Take for instance the case when the Collector is in possession under this Act and the Civil Court Commissioner comes on the land to measure, survey and deliver possession of such attached lands under the orders of the civil court in execution of a decree of such court, and what will the Collector do in such circumstances? The Act does not give any indication whatsoever about it and is entirely silent in this matter and by making these provisions I am trying to lay down a rule as to what the Collector shall do. Shall the Collector in such cases resist the action of the civil court? If the answer be "yes," then you bring in a sharp conflict between two constituted authorities, and my submission is this, that you should not do so. If the answer be "no," then you are in accord with me and what I now submit for your consideration is now more than a request to you to put that view of yours in the statute, because leaving it unwritten and undefined you leave the matter unsettled. It may be said that this matter is so apparent that it requires no statutory provision. But I may say that law has not always been modelled on logic but on experience also. My experience of this matter is as evidenced in the proceedings in court of law that this piece of logic which is so apparent to you has failed to carry any conviction to many Collectors and they have in point of fact refused to recognise the decrees and delivery of possession given by civil courts. I am in possession of facts—the judgments of courts of law will amply bear out my statements. Instances have come up before courts of law and also in the High Court, where the Collectors acting under these powers have re-attached the recently formed *char* lands of which possession has been given to a party in execution of a decree for

possession on declaration of title. There have also been cases in courts where the Collectors acting under this Act have dispossessed persons put in possession of lands under the orders of competent court of civil jurisdiction in execution of a decree of the Hon'ble High Court. There have also been cases in which lessees from the Collectors resisted the delivery of possession though officers of the civil court passed in execution of order for delivery of possession and the Collector has not stayed his hands. In these circumstances it is desirable that for the ends of justice and to avoid conflict of authorities, the final decree of a civil court should be respected. The purpose of this statute is, as indicated already, to prevent disputes concerning lands gained by alluvion. It is therefore consonant with the purposes of this Act to stay all proceedings under this Act, where the civil court has put a party or is going to put a party in possession in execution of a decree by a competent court of civil jurisdiction after determining title thereof. Because it must be held then that by such civil court decree all disputes with regard to such land have ceased to exist. Otherwise, there can be no finality to the continuity of proceedings with regard to such lands. There can be no reason consonant with principles of justice and equity that why the Collector should not respect the decrees and orders of civil courts of competent jurisdiction. That by these provisions the successful party in the civil court is not required again to go to civil court for the establishment of his title which has recently done and if you do not make these provisions and allow the civil court's decree to be belittled, the successful party will have again to go in another litigation at a huge cost and expense and there will be no finality in litigations. If the civil court is not allowed to execute its own decree regarding a recently formed land, then the Collector is given powers to override the provisions in the Civil Procedure Code.

With these words, Sir, I commend my motion to the acceptance of the House.

Mr. O. M. MARTIN: Sir, the principle of this amendment is quite correct. I mean the principle that the Collector must respect the decree of a civil court and when he finds that all disputes to the land have been decided by the decree of a civil court, he should, as a matter of proper conduct, in his turn release the land. The difficulty is that this amendment as it stands will unduly tie the hands of the Collector in certain cases. Supposing, for instance, A in a suit against B got a decree for the declaration of title and delivery of possession, and got possession of the same by order of the civil court, then if they were the only two parties struggling for the *char*, I think the Collector would be bound to release it. But we have got to consider cases in which there is a third party whose rights are not affected by the civil court decree. This Council may remember it is very common for several

parties to struggle for the same *char*, and I believe it very often happens that men who have absolutely no right seize land just for the purpose of cultivation. Even when a *char* has been attached by the Collector, a party of men may go down and seize the *char*. The first case of this kind I had to deal in the district of Dacca was the forcible seizure of a *char* which had already been attached under the Act. The assailants committed rioting with double murder. This example will show how desperate some of these men are. The reason which should weigh with the Collector in deciding to release a *char* is that no violent dispute is likely to arise in the near future, owing to the settlement of existing disputes. There may be such a thing as a dispute between A and B on the one hand and C on the other, although A and B may have had their dispute decided by the civil court. I hope Mr. Mullick will realise these difficulties and withdraw his amendment.

Mr. NARENDRA KUMAR BASU: Sir, I beg to support this amendment, and I am more inclined to do so after hearing Mr. Martin. If there is a dispute between A and B and they go to civil court, and A gets a decree and possession of the land, and then if the Collector would have the right to attach the land, because C comes in and starts another dispute, then it would be practically ignoring the decree of the civil court. In my submission as in section 145 of the Criminal Procedure Code, these proceedings regarding alluvial lands ought certainly to end with the civil court decree. If a competent civil court has declared the right and has given over possession in execution of a decree, I think the Collector should not have the power to attach the land. As regards the case to which Mr. Martin has referred, I am afraid that no amount of attachment by the Collector can stop murders. I know personally from a case in which I appeared before the then Acting Chief Justice that in Noakhali there had been three murders following one another, on a *char* which had been under attachment by the Collector. Is it suggested that when there are different claimants the Collector shall keep the land under attachment for ever? I hope not. I submit that the amendment of Mr. Mullick is a reasonable one and ought to be accepted.

The motion being put, a division was taken with the following result:—

AYES.

Banerji, Mr. P.
Barma, Rai Sahib Panchanan.
Basu, Mr. Narendra Kumar.
Chaudhuri, Khan Bahadur Maulvi Alimuzzaman.
Chowdhury, Maulvi Abdul Ghani.
Ghose, Dr. Amulya Ratan.
Hoque, Kazi Emdadul.
Hussain, Maulvi Muhammad.
Maiti, Mr. R.
Mookerjee, Mr. Syamaprasad.

Mullick, Mr. Mukunda Behari.
Quasem, Maulvi Abul.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Ray, Mr. Shanti Shekhareswar.
Roy, Mr. Sarat Kumar.

NOES.

Ahmed, Khan Bahadur Maulvi Emdaduddin.
Bottomley, Mr. J. M.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Dutt, Mr. B. S.
Edgley, Mr. R. G. A.
Faroqui, the Hon'ble Nawab K. R. M., Khan Bahadur.
Fawcus, Mr. L. G.
Ghose, the Hon'ble Sir Ghara Chunder.
Ghaznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkerim, of Dildusr.
Gilchrist, Mr. R. R.
Gladding, Mr. D.
Hogg, Mr. G. P.
Hosain, Nawab Mesharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Mitter, Mr. S. C.
Momin, Khan Bahadur Muhammad Abdul.
Nag, Reverend R. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Norton, Mr. H. R.
Rahman, Mr. A. F.
Roll, the Hon'ble Mr. R. N.
Ray, the Hon'ble Sir Bijoy Prasad Singh.
Ray, Mr. S. R.
Sarker, Rai Bahadur Rohini Mohan.
Sen, Mr. R. R.
Townend, Mr. H. F. V.
Wilkinson, Mr. N. R.
Williams, Mr. A. deG.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 16 and "Noes" 32, the motion was lost.

Maulvi ABUL QUASEM: I beg to move that in clause 2 (*4*) in proposed sub-section (*4*) of section 3, line 13, after the words, figures and brackets "under section 4, sub-section (*1*)", the word "and" be inserted.

I also move that in clause 2 (*4*) in proposed sub-section (*4*) of section 3, lines 14 to 16, the following words, figures and brackets be omitted, namely:—

"and the cost of preparation of the reference to be made under section 5, sub-section (*1*), if any."

I also move that in clause 2 (*4*) in proposed sub-section (*4*) of section 3, lines 14-16, for the words, figures and brackets "and the cost of preparation of the reference to be made under section 5, sub-section (*1*), if any," the words, figures and brackets "and the cost of making the reference, if any, under section 5, sub-section (*1*)" be substituted.

Sir, I do not think there is any necessity for these words: "and the cost of preparation of the reference to be made under section 5, sub-section (*1*), if any". This is an amendment to section 3. When an attachment is cancelled under sub-section (*3*), then only the question of calculation of net receipts will arise. There is no question of the cost of reference under sub-section (*3*), because at that time no reference can have been made by the Collector. I do not understand why this sentence has been inserted there. Sub-section (*3*) of section 3 makes it quite clear that an order of attachment could be cancelled only before the Collector made an order of reference. Why should there

be any talk of cost, when no reference has been made, I cannot understand. That is why I propose that these words should be altogether omitted, because they have no relevancy in the place where they are inserted. If amendment No. 7 were carried, I would not press the next amendment. But I do not know the attitude of Government and therefore I have suggested an alteration in the words which I wanted to be omitted; that is why I have suggested amendment No. 8. The words "if any" refer to reference and not to cost. The Collector will make an order of reference, and in the proposed sub-clause (*1a*) to clause 4 there is a provision that the Collector shall advance court fees and also process fees, and that I find is the only cost not already provided for so far as making a reference is concerned. The Collector after considering the claims of the claimants who appear before him will have to make a reference to the civil court. I do not understand why the preparation of the reference should cost anything. If you say preparation of the reference is the first stage and the next stage would be the filing or presentation of the same in the court, I do not understand what special importance can be attached to the preparation of the reference. Simply "making the reference" would cover both preparation and presentation. Is it intended that something like a plaint would be prepared by the Government Pleader or a simple statement of the claims would be made by the Collector himself from the materials before him?

The Hon'ble Sir CHARU CHUNDER GHOSE: I might say that Government are prepared to accept amendment No. 6.

Maulvi ABUL QUASEM: If amendment No. 7 is not accepted, amendment No. 6 means nothing.

Mr. PRESIDENT: But you cannot prevent Government from accepting it. It is their lookout, but the House has finally to say "Yes" or "No".

Maulvi ABUL QUASEM: They may do so, Sir, in order to smooth my feelings, but I am not going to be pacified in this way. I beg to submit strongly that the cost of preparation of reference includes communication with the people as well as the cost of staff. Accordingly, I commend my motion to the acceptance of the House.

Mr. O. M. MARTIN: With regard to No. 7, Government is unable to accept it. I may point out that the Collector can release the land

under section 3 any time before he actually takes the land; but in the meantime he may have incurred a lot of expenses in preparing the reference. These expenses must be debited to the income derived from the attached land, otherwise the expenses would fall on Government. If members want to know what work the Collector has to do in preparing the reference, I would draw their attention to clause 3 which gives a lengthy list of the duties of the Collector in this connection. I may say again, Sir, that the preparation of the reference costs money; making a reference is a different thing. Preparation of the reference is a major part of the Collector's duty under the Act and is a long and lengthy job (interruptions). It may be so, but it is sufficient to say that the preparation of the reference by the Collector is a lengthy job and takes a long time, and it costs money. So we must provide for this money out of the proceeds of the land. So much for No. 7.

As regards No. 8 which is alternative to No. 7, I may point out that the "cost of making a reference," which this amendment refers to, does not come into consideration at all, when the land is released under section 3. If the reference has been made, the land cannot be released under section 3. The preparation of the reference is what we are concerned with, and I have said already, the preparation of a reference costs the Collector a lot of money and he must recover this money from the attached land.

Maulvi ABUL QUASEM: May I ask Mr. Martin a question? Has he considered section 7 of the existing Act?

Mr. O. M. MARTIN: Yes, Sir, we have considered it very carefully. I oppose both the amendments.

Maulvi Abul Quasem's motion (No. 6) was put and agreed to.

The two other motions of Maulvi Abul Quasem were then put and lost.

Mr. NARENDRA KUMAR BASU: I beg to move that in clause 2 (4) to proposed sub-section (4) of section 3, the following be added at the end namely:—

"Any person aggrieved by such order may within one month from the date of such order apply to the principal Civil Court of Original Jurisdiction in the district and such application shall be treated as a suit between the applicant and the person in whose favour the Collector has made his order."

The purpose of this amendment, Sir, is self-evident. If the Collector has made an order for payment of money in favour of a certain person, then I am giving liberty to that person to apply to the civil court and the Collector's order in directing that the money should be paid to a certain person, namely A, need not stand in the way of B disputing

that in the civil court, and I submit that the liberty of the person to pursue his remedy in the civil court ought not be taken away? There is absolutely no reason from the point of view of the Collector or of the Government why this amendment should not commend itself to them. I submit that the acceptance of this amendment will not only clear the rights of the disputants but also do no harm for the purpose of the Alluvial Lands Bill.

Mr. O. M. MARTIN: I rise to oppose the amendment. The amendment if accepted will only encourage litigation. There is no reason why the Collector should not be given discretion to order payment of such receipts to persons who are entitled to receive them, in his opinion. I may point out that when the order of attachment is cancelled, it is because there is a settlement between the parties. The amendment would mean that after the dispute has been settled one of the parties might again commence litigation with regard to his share of the net receipts. Mr. Basu asks what harm is there. But I may simply say that it will encourage litigation, and benefit nobody.

The motion being put, a division was taken with the following result:—

AYES.

Banerji, Mr. P.
Basu, Mr. Narendra Kumar.
Chowdhury, Maulvi Abdul Ghani.
Hoque, Kazi Emdadul.
Hussain, Maulvi Muhammad.
Mookerjee, Mr. Syamaprasad.
Mullick, Mr. Mahendra Behary.
Qasem, Maulvi Abul.
Rahman, Mr. A. F.

NOES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Barma, Rai Sahib Panchanan.
Bottomley, Mr. J. M.
Cohen, Mr. D. J.
Dain, Mr. G. R.
Das, Rai Bahadur Kamini Kumar.
Dutt, Mr. G. S.
Edgley, Mr. R. G. A.
Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur.
Fawcus, Mr. L. R.
Ghosh, the Hon'ble Sir Charu Chunder.
Ghuznavi, the Hon'ble Alhadj Nawab Bahadur Sir Abdelkarim, of Dhaka.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Guha, Mr. P. N.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Maguire, Mr. L. T.
Martin, Mr. O. M.
Miller, Mr. S. C.
Nag, Reverend, S. A.
Nazimuddin, the Hon'ble Mr. Khwaja.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Roy, the Hon'ble Sir Bijay Prasad Singh.
Roy, Mr. Satkowri Singh.
Roy, Mr. Saral Kumar.
Roy, Mr. S. N.
Sarker, Rai Bahadur Saroj Mohan.
Sen, Mr. B. R.
Townend, Mr. H. P. S.
Wilkinson, Mr. H. R.
Williams, Mr. A. deG.
Woodhead, the Hon'ble Mr. J. A.

"Ayes" being 9 and "Noes" 35, the motion was lost.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, very respectfully I beg to bring to your kind notice that this is a matter which is

not urgent for the purpose of law and order, or that unless we pass the Bill to-night the administration will stop, but this is a Bill——

Mr. PRESIDENT: I may tell you that it is not my duty to judge on the comparative worth or merits of the two Bills.

Mr. MUKUNDA BEHARY MULLICK: I beg to move that in clause 2 (*4*), proposed sub-section (*5*) (*c*) of section 4 be omitted.

My reason for moving this amendment is that sub-clause (*c*) is included in sub-clause (*a*) of this very section. In sections 3 to 10 of the Act, it was definitely stated that Government were entitled to management cost not exceeding five *per cent. per annum*—

The Hon'ble Sir CHARU CHUNDER GHOSE: Sir, in view of the representations which have been made by the other side of the House, I do not wish to proceed further with this Bill. I desire it to be suspended and taken up later on.

Mr. PRESIDENT: Then your desire is that it should be taken up in the next session, and should be left where it now stands.

The Hon'ble Sir CHARU CHUNDER GHOSE: Sir, we shall take it up later on.

Mr. PRESIDENT: In that case, I shall take up the next item of business, I mean amendments to the Bengal Legislative Council Standing Orders at once.

Amendment of the Standing Orders.

Mr. NARENDRA KUMAR BASU: Sir, I beg to move that the amendments to the Standing Orders of this Council as settled in Council be passed.

In moving this, Sir, I shall not take more than a couple of minutes. My first duty is to express my gratitude to His Excellency for having kindly allotted time for this motion. Secondly, I may point out that when these amendments were considered in the Council, I naturally thought, in view of the amendment made to No. 68 (*b*), that I should take some time to consider the matter. I did not move it then, but I have decided to bow to the collective wisdom of the House. I now beg to move that the amendments to the Standing Orders, as settled in Council, be passed.

The motion that the amendments to the Standing Orders, as settled in Council, be passed, was then put and agreed to.

Adjournment.

The Council was then adjourned till 3 p.m. on Monday, the 12th March, 1934, at the Council House, Calcutta.

B. G. Press—1934-35—[illegible]A—[illegible]

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(Official Report.)

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That in clause 6, in proposed section 2A, line 7, after the word "which", the words "is incorrect and" be inserted lost, 12 to 56 : 584.

That in clause 6, in proposed section 2A, lines 7 and 8, the words "in the opinion of the Local Government" be omitted lost, 21 to 54 : 595-596.

That in clause 6, in proposed section 2A, lines 7 and 8, for the words "in the opinion of the Local Government tends to create an atmosphere" the word "is" be substituted lost, 16 to 59 : 601.

That in clause 6, proposed section 2A, be omitted lost, 10 to 63 : 620-621.

That in clause 4, line 6, for the word "indicating" the word "proving" be substituted lost, 24 to 65 : 518-519.

That in clause 4, in proposed section 20A, lines 10 and 11, the words "with death, or" be omitted lost, 20 to 59 : 531-532.

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That in clause 5A, proposed section 5B, in lines 9 and 10, the words "with death or" be omitted lost, 28 to 57 : 550-551.

That in clause 5A, in proposed section 5B, line 13, for the word "fourteen" the word "ten" be substituted lost, 14 to 72 : 552.

That the Bengal Criminal Law (Amendment) Bill, 1934, as settled in Council, be passed carried, 61 to 16 : 753-754.

That the Bill be recommitted lost, 16 to 86 : 473-474.

Bengal Nurses' Bill, 1934

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Provided that this Act shall not apply to any wakf created by the Dawoodi Bora community carried, 36 to 20 : 63-64.

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That in the second proviso to clause 22, in line 2, for the words "one hundred" the word "fifty" be substituted lost 22 to 37 : 139.

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Observations by

A member may change his opinion as fresh lights may be thrown and fresh arguments which may alter his opinion : 712

An appeal to the members of the Government Benches may be made if a member adopts the right procedure : 193.

An hon'ble member who speaks against a motion may be allowed to vote for it in the division lottery. It depends on how he voices his opinion when the Chairs says "Aye" or "No" : 676.

A reflection on the House cannot be allowed : 752.

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Articles from newspapers, especially in connection with any discussion of a particular amendment, is not permissible : 590.

President (the Hon'ble Raja Sir Manmatha Nath Ray Chowdhury, Kt., of Santosh)

Observations by—

I have no doubt cut down the time-limit as an emergency measure, but if an important matter is before the house and I feel that a speech on its own merits should be allowed to be continued, I shall always relax the stringency of my order : 715.

Individual attacks must be withdrawn : 567.

One should not be disturbed when speaking. It is for the Chair to judge whether one member should not repeat his arguments : 357.

It is not the duty of the President to judge on the comparative worth or merits of bills : 768.

It is solely the duty of the Chair either not to ask an Hon'ble Member of Government to reply before, an amendment has been sufficiently discussed or to allow others to speak after he has replied : 596.

Members cannot quote from any memorial of doubtful authentication, though they may base their cases on relevant facts : 59.

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